

Washington, Wednesday, December 14, 1938

Rules, Regulations, Orders

TITLE 30-MINERAL RESOURCES

NATIONAL BITUMINOUS COAL COMMISSION

[General Docket No. 15]

ORDER IN THE MATTER OF THE ESTABLISH-MENT OF MINIMUM PRICES AND MARKET-ING RULES AND REGULATIONS

IN RE PROPOSALS OF MINIMUM PRICES SUB-MITTED BY THE DISTRICT BOARDS FOR DIS-TRICTS NOS. 16, 17 AND 18 (COMPRISING MINIMUM PRICE AREA NO. 6); DISTRICTS NOS. 19 AND 20 (COMPRISING MINIMUM PRICE AREA NO. 7); DISTRICT NO. 22 (COM-PRISING MINIMUM PRICE AREA NO. 9), AND DISTRICT NO. 23 (COMPRISING MINIMUM PRICE AREA NO. 10)

At a session of the National Bituminous Coal Commission held at its offices in Washington, D. C., on the 9th day of December, 1938.

The Commission, on the 25th day of May, 1938,1 having instituted the within proceedings entitled "In the Matter of the Establishment of Minimum Prices and Marketing Rules and Regulations, General Docket No. 15," for the purpose of carrying out the provisions of subsections (a) and (b) of Section 4, Part II, of the Bituminous Coal Act of 1937,2 and thereafter, upon the 30th day of July, 1938, after Notice and Hearing, having determined the weighted average cost, as provided in Section 4 II (a) of the Act, for each of Minimum Price Areas 6, 7, 9 and

10, did, on the said 30th day of July, 1938, by Order No. 245, direct each of the districts within each of the aforesaid Minimum Price Areas to propose minimum prices in conformity with the provisions of said Section 4 II (a) of the Act, and, in accordance with the rules and regulations prescribed by said Order No. 245, and

Each of said District Boards having, thereafter, proposed such minimum prices, the Commission, by its Order entered in this proceedings on August 29, 1938,5 directed that a hearing on such proposals be held in the Hearing Room of the Commission at the Albany Hotel, Denver, Colorado, commencing on the 14th day of September, 1938, at the hour of 10 o'clock, a. m., for the purpose of receiving evidence relating to said proposals to enable the Commission to approve such proposed minimum prices, or to enable the Commission to modify such proposed minimum prices so as to conform them to the requirements of Section 4 II (a) of the Act, in order that such proposed minimum prices, as approved, or modified, as the case may be, may serve as the basis for the coordination, as provided by Section 4 II (b) of the Act, and

Reasonable public notice thereof having been given, said Hearing was commenced at the time and place stated, and concluded on the 22nd day of September, 1938, at which Hearing all interested parties were afforded full opportunity to be heard, and

The evidence being adduced and the Commission being fully advised in the premises, and upon consideration thereof, the Commission made Findings of

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³ F. R. 1200, 1226 DI.

² 50 Stat. 72.

^{*3} F.R. 1893 DI.

⁴³ F. R. 1895 DI.

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Walnut Electric & Gas Corp., effectiveness of application_ proposal of minimum prices submitted by each of the aforesaid District Boards, which Findings are on file in the office of the Secretary of the Commission at Washington, D. C., and by this reference are incorporated herein and made a part hereof, and

Included in the said Findings of Fact and Conclusions, relating to each of the aforesaid Districts, is an appendix entitled, "Schedule of Minimum Prices as Modified and Approved to Serve as a Basis for Coordination", which schedule embraces all modifications which the Commission determined to be necessary to conform the proposals of the respective districts to the requirements of Section 4 II (a) of the Act, and which the Commission has determined to be the proper basis to be used by the respective districts for the coordination provided for in Section 4 II (b) of the Act:

Now, therefore, Pursuant to the provisions of the Bituminous Coal Act of 1937. the National Bituminous Coal Commission orders and directs:

1. That in the coordination of minimum prices, as provided by Section 4 II (b) of the Act, to be hereafter directed by subsequent Order of the Commission, the District Boards will take, as a basis thereof, the schedules as approved herein and set out opposite their respective names as follows:

District No. 16.—Appendix to the Findings for District No. 16, as above referred to, entitled "Schedule of Minimum Prices as Modified and Approved to Serve as a Basis for Coordination".

District No. 17.—Appendix to the Findings for District No. 17, as above referred to, entitled "Schedule of Minimum Prices as Modified and Approved to Serve as a Basis for Coordination".

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District No. 19.—Appendix to the Findings for District No. 19, as above referred to, entitled "Schedule of Minimum Prices as Modified and Approved to Serve as a Basis for Coordination".

District No. 20.-Appendix to the Findings for District No. 20, as above referred to, entitled "Schedule of Minimum Prices as Modified and Approved to Serve as a Basis for Coordination".

District No. 22.—Appendix to the Findings for District No. 22, as above referred to, entitled "Schedule of Minimum Prices as Modified and Approved to Serve as a Basis for Coordination".

District No. 23.—Appendix to the Findings for District No. 23, as above

Fact and Conclusions relating to the referred to, entitled "Schedule of Minimum Prices as Modified and Approved to Serve as a Basis for Coordination".

> 2. The Secretary of the Commission be, and he is hereby, directed to cause a copy of this Order to be published forthwith in the FEDERAL REGISTER, and to cause a copy hereof, together with the Findings of Fact, including the Appendix thereto, for each district, to be mailed to the Consumers' Counsel, to the Secretary of each District Board, to all interested parties who have entered their appearances in the hearing relating to said proposals, and to make copies of this Order and Findings of Fact, including the appendices thereto, available for inspection by interested parties at the office of the Secretary of the Commission, Washington, D. C., and at the office of each Statistical Bureau of the Commission.

By order of the Commission. Dated this 9th day of December, 1938. [SEAL] F. WITCHER McCullough, Secretary.

[F. R. Doc. 38-3725; Filed, December 12, 1938; 9:45 a. m.]

[General Docket No. 15]

ORDER IN THE MATTER OF THE ESTAB-LISHMENT OF MINIMUM PRICES AND MARKETING RULES AND REGULATIONS

IN RE PROPOSAL OF RULES AND REGULATIONS INCIDENTAL TO THE SALE AND DISTRIBU-TION OF COAL BY CODE MEMBERS SUB-MITTED BY THE DISTRICT BOARDS FOR DISTRICTS NOS. 16, 17, 18, 19, 20, 22 AND 23

At a session of the National Bituminous Coal Commission held at its offices in Washington, D. C. on the 9th day of December, 1938.

The Commission, on the 25th day of May, 1938, having instituted the aboveentitled proceedings for the purpose of carrying out the provisions of Subsections (a) and (b) of Section 4, Part II, of the Bituminous Coal Act of 1937, and having on the 30th day of July, 1938, by its Order No. 244,3 directed the District Boards for Districts Nos. 16, 17, 18, 19, 20, 22 and 23 to propose reasonable rules and regulations incidental to the sale and distribution of coal by the code members of the respective districts in conformity with the provisions of Section 4, II (a) of the Act,

And each 'of the aforesaid District Boards having submitted such proposed rules and regulations together with the reasons upon which they were predi-

⁶ See page 2917.

¹³ F. R. 1200, 1226 DI.

^{2 50} Stat. 72. 83 F. R. 1894 DL

with the provisions of said Order No. 244, the Commission did on the 29th day of August, 1938 direct that a hearing on said proposals be held in the Hearing Room of the Commission in the Albany Hotel in the City of Denver, Colorado at 10:00 A. M. commencing on the 14th day of September, 1938, for the purpose of receiving evidence to enable the Commission to approve such proposed marketing rules and regulations, or to enable the Commission to modify the proposed marketing rules and regulations as provided in Section 4, II, (a) of the Act in order that such proposed marketing rules and regulations, as approved or modifled, as the case may be, may serve as the basis for the coordination provided by Section 4, II, (b) of the Act, and

After reasonable public notice having been given thereof, said hearing was commenced at the time and place stated and concluded on the 22nd day of September, 1938, at which time all interested parties were afforded a full opportunity to be heard, and the evidence being adduced, the Commission being fully advised in the premises has made Findings of Fact and Conclusions 5 relating to the proposals of each of said districts, which Findings of Fact and Conclusions are on file at the Office of the Secretary of the Commission, Washington, D. C., and which are by this reference incorporated herein and made a part hereof, and

The Commission having determined that the rules and regulations as set forth in the said Findings of Fact and Conclusions for each of the respective districts are reasonable and are not inconsistent with the requirements of Section 4 of the Act, and do conform to the standards of fair competition established by Section 4 of the Act, and form a proper basis for the coordination provided for by Section 4, II, (b) of the Act,

Now, therefore, Pursuant to the provisions of the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby approves, for the purpose of coordination, the "Rules and Regulations incidental to the sale and distribution of coal by code members", as the same are set forth in the "Findings of Fact and Conclusions" by the Commission for each of Districts Nos. 16, 17, 18, 19, 20, 22 and 23 filed this date in the Office of the Secretary of the Commission, Washington, D. C.

The Secretary of the Commission is hereby directed to cause a copy of this Order to be published forthwith in the FEDERAL REGISTER, and to cause a copy hereof, together with the "Findings of Fact and Conclusions" of the Commission, above referred to, to be mailed to the Consumers' Counsel, to the Secretary of each District Board, to all parties who have filed their appearances in the hearing relating to the aforesaid proposals. and to cause copies thereof to be made

By order of the Commission. Dated this 9th day of December, 1938. [SEAL] F. WITCHER McCullough, Secretary.

[F. R. Doc. 38-3726; Filed, December 12, 1938; 9:45 a. m.]

[Docket No. 15]

MINIMUM PRICES AND MARKETING RULES AND REGULATIONS AS PROPOSED AND SUB-MITTED TO THE NATIONAL BITUMINOUS COAL COMMISSION BY THE DISTRICT BOARDS FOR DISTRICTS 16, 17, 18, 19, 20, 22 AND 23 WITHIN MINIMUM PRICE AREAS 6, 7, 9 AND 10

FINDINGS AS TO THE FACTS AND CONCLUSIONS OF THE COMMISSION

Pursuant to the provisions of an Act of Congress approved April 26, 1937, entitled "An Act to regulate interstate commerce in bituminous coal and for other purposes" (Public No. 48, 75th Congress, 1st Sess.), known as the "Bituminous Coal Act of 1937." and hereinafter referred to as the "Act," the National Bituminous Coal Commission, hereinafter referred to as the "Commission," under and by virtue of the authority granted in Section 4-II (a) of the Act, on the 30th day of July, 1938, issued its Orders No. 244 and No. 245 ordering and directing the District Boards for Districts 16, 17, 18, 19, 20, 22 and 23 within Minimum Price Areas 6, 7, 9 and 10, to propose to the Commission reasonable rules and regulations incidental to the sale and distribution of coal by code members within said districts and minimum prices of kinds, qualities and sizes of coal produced in said districts, said proposals to be submitted to the Commission on or before the 24th day of August, 1938.

Said orders were; published in the FeD-ERAL REGISTER under date of August 2. 1938,2 and copies of said orders were mailed to each of the code members within said districts and to each of the Secretaries of the District Boards within Minimum Price Areas 6, 7, 9 and 10, as directed in said orders.

Order No. 245 directed each of the aforesaid District Boards to propose to the Commission minimum prices f. o. b. transportation facilities at the mines for kinds, qualities and sizes of coal produced by the code members in their respective districts, and to propose such classification of coal and price variations as to mines, consuming market areas, values as to uses and seasonal demand, as might be deemed proper and within the authority conferred by the Act. This order further provided that each district board should transmit its schedule of proposed mini-

mum prices to each code member in the district before filing such schedule with the Commission in order to give code at the office of each Statistical Bureau members an opportunity of protesting any proposed price classification.

> Said Order No. 245 further directed that the minimum prices proposed by the several district boards should conform to the following standards therefor set out in Section 4-II (a) of the Act:

- (a) The proposed minimum prices for each of the aforesaid districts shall yield a return, per net ton, for such districts. equal as nearly as may be to the weighted average of the total costs, per net ton, of the tonnage of the minimum price area within which such district is located, as said weighted average heretofore has been determined by orders of the Commission dated July 30, 1938, and August 1, 1938, in this proceeding.
- (b) They shall reflect, as nearly as possible, the relative market value of the various kinds, qualities and sizes of coal to which they are applicable.
- (c) They shall be just and equitable as between producers within the district.
- (d) They shall be just and equitable as between producers within the district, for any kind, quality or size of coal for shipment into any consuming market area.
 - (e) They shall not permit dumping.

Said Order No. 245 further directed that each schedule of proposed prices submitted by the district boards should include the following clause:

"Note.—The prices in this schedule are not the final minimum prices that will be established on coal for shipment by code members within this district into consuming markets of this district. In the ultimate establishment of the effective minimum prices, pursuant to subsection (b) of Part II, Section 4 of the Act, the minimum prices as proposed in such schedule, or as modified, are subject to such increase or decrease, respectively, as may be necessary to carry out the provisions of subsections (a) and (b) of Part II, Section 4 of the Act."

Order No. 244 directed each of the aforesaid District Boards to propose to the Commission reasonable rules and regulations incidental to the sale and distribution of coals by the code members of their respective districts, such rules and regulations not to be inconsistent with the requirements of Section 4 of the Act and to conform to the standards of fair competition therein established. Said order directed the District Boards to transmit such proposed rules and regulations to all code members in order that they would be afforded an opportunity of studying such proposed rules and regulations and of protesting to any of such proposals and to suggest whatever added rules or regulations such code members deemed necessary to properly effectuate the purposes of Section 4 of the Act.

Upon receipt of said orders by the several District Boards within Minimum

cated, to the Commission in accordance | available for inspection by interested | parties at the office of the Secretary of the Commission, Washington, D. C., and of the Commission.

¹ 50 Stat. 72.

³ 3 F. R. 1894, 1895 DI.

⁴³ F. R. 2132 DI.

⁵ See next column.

Price Areas 6, 7, 9 and 10, said District | sel, Washington, D. C., and to the Secre-Boards, as directed in said orders, proceeded to propose such minimum prices and marketing rules and regulations as in their judgment conformed to the requirements of said orders. Schedules evidencing such proposals were prepared by said District Boards and copies of same were transmitted to each code member within the respective districts in order that such code members, after due consideration of such schedules, might present to their respective District Boards whatever objections, if any, they might have to said schedules, and in order that the respective District Boards, after due consideration of such objections, if any, might revise such schedules in such manner as, in their judgment, would better conform to the requirements of Orders No. 244 and No. 245, as issued by the Commission, and to the requirements of Section 4-II (a) of the Act.

The schedules of minimum prices, as revised, together with the data upon which same were computed and the schedules of marketing rules and regulations, together with the reasons supporting same, were transmitted to the Commission as directed in said orders.

Subsequent to the receipt of said schedules, by the Commission, the Commission, on the 29th day of August, 1938, issued its order giving notice to all interested parties of a hearing to be held upon the proposals of minimum prices and marketing rules and regulations as proposed and submitted to the Commission by the District Boards for Districts 16, 17, 18, 19, 20, 22 and 23, said hearing to be held on the 14th day of September, 1938, at the Albany Hotel, Denver, Colorado. As expressed in the face of said order, said hearing was to be held for the purpose of receiving evidence relating to the aforementioned proposals of minimum prices and marketing rules and regulations in order to enable the Commission to approve or modify such proposals to the end that such proposals, as approved or modified, may serve as the basis for the coordination of same as provided in Section 4-II (b) of the Act.

Said order giving notice of said hearing directed the Secretary of the Commission to cause copies of said proposals to be made available for inspection by interested parties at the office of the Secretary of the Commission at Washington, D. C., and at the office of each Statistical Bureau of the Commission within each of the districts within Minimum Price Areas 6, 7, 9 and 10; to cause a copy of said order to be published forthwith in the Federal Register and in two consecutive issues of a newspaper having a general circulation in each of the districts within Minimum Price Areas 6, 7, 9 and 10; to cause a copy of said order to be mailed to each of the code members within said districts, to the office of Consumers' Coun-

taries of each of the District Boards for the districts within Minimum Price Areas 6, 7, 9 and 10. A copy of said order was directed to be made available for inspection at each of the Statistical Bureaus of the Commission within said districts.

The aforesaid directions in said order were complied with. A copy of said order was made available for inspection at the office of the Secretary of the Commission at Washington, D. C., and at the office of each of the Statistical Bureaus of the Commission within each of the districts within Minimum Price Areas 6, 7, 9 and 10. A copy of said order was published in the FEDERAL REG-ISTER of date, August 31, 1938, and copies of said order were mailed to each of the code members within Minimum Price Areas 6, 7, 9 and 10; to the office of Consumers' Counsel, Washington, D. C.; to each of the Secretaries of the District Boards within Minimum Price Areas 6, 7, 9 and 10. A copy of said order was published two times consecutively in the Denver Post, Denver, Colorado; the Daily Sentinel, City of Grand Junction, Colorado; the Albuquerque Journal, Albuquerque, New Mexico; the Casper-Herald Tribune, Casper, Wyoming; the Great Falls Daily Tribune, Great Falls, Montana; and the Seattle Post-Intelligencer, Seattle, Washington, newspapers having a general circulation in each of the respective districts within Minimum Price Areas 6, 7, 9 and 10.

Due and reasonable notice of said hearing having been given all interested parties, said cause came on for hearing before the Commission on the 14th day of September, 1938, at the hour and place as specified in said order, to wit, at 10 A. M., at the Albany Hotel, Denver, Colorado; and, after said hearing had been duly and formally opened and all interested parties desiring to appear had entered their appearances in said cause, the Commission proceeded to receive evidence relative to the proposals of minimum prices and marketing rules and regulations as proposed to the Commission by the District Boards for Districts 16, 17, 18, 19, 20, 22 and 23. The hearing concluded on the twenty-second day of September, 1938.

At said hearing all interested parties were afforded full opportunity to be heard on the proposals of minimum prices and marketing rules and regulations which had been submitted by each of the aforesaid District Boards and each of said District Boards adduced evidence relating to such proposals and placed into this record as exhibits all of the data which such Boards had used as a basis for such proposals and each of the Boards by competent witnesses testified as to the factors which the Boards had considered in determining the marketing rules and regulations and the price relationships which had been proposed by the Boards in their respective schedules.

Each of the schedules of proposed minimum prices offered in evidence by the District Boards contained the clause previously quoted from Order No. 245 and thereby clearly indicated that the District Boards were proposing minimum prices free on board transportation facilities at the mines for kinds, qualities, and sizes of coal produced in each of the aforesaid districts without taking into consideration those additional factors and standards which are set forth in Section 4, Part II, Subsection (b) of the Act. The minimum prices so proposed as hereafter approved or modified will serve as a basis for coordination as provided in said Section 4-II (b) of the Act. Such proposals of minimum prices do not take into account differences in transportation methods and charges and their effect upon a reasonable opportunity to compete on a fair basis, nor competitive relationships between coal and other forms of fuel and energy as such matters constitute a part of the coordination of minimum prices and are properly a subject of consideration under said Section 4-II (b) of the Act.

The evidence adduced at said hearing having been duly reported and filed with the Commission, the Commission, after due consideration of same and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

MINIMUM PRICE AREA NO. 6-DISTRICT No. 16

PROPOSED MINIMUM PRICES

In compliance with Order 245 of the Commission, directing the District Board for District '16 to propose minimum prices, free on board transportation facilities at the mines for kinds, qualities and sizes of coal produced in said District, and classification of coal and price variations as to mines, consuming market areas, values as to uses and seasonal demand, the District Board for District 16 held a number of meetings for the purpose of properly classifying the coals of each mine in relation to the coals of other mines in the District. As a result of said meetings a schedule of proposed minimum prices was drafted by said District Board and forwarded to each of the Code Members within District 16. Accompanying said schedule was a letter directed to the Code Members within District 16 informing such Code Members that they would be allowed a period of seven (7) days in which to file objections to said schedule of proposed minimum prices.

On August 20, 1938, a meeting was held by the District Board for District 16 for the purpose of considering_protests to said schedule.

One complaint from El Paso County requested that the schedule provide a price for 3" x 21/2" nut coal for the reason that mines in that County had built up a considerable business in such coal. The District Board agreed that such request was well taken and the

^{8 3} F. R. 2132 DI.

tentative schedule of proposed minimum | to competition, one mine would put in a | coal. They are popular for domestic and prices was amended accordingly. This amendment appears in Size Group No. 7 in the amended Schedule.

A request from one operator in the La-Salle Subdistrict, asking that provision be made in the Schedule for 11/2" lump in said Subdistrict, same to take a lower price than 21/2" lump, was denied.

Susequent to said meeting certain revisions were made in the classification schedule. Size Group No. 7 in the amended schedule was adopted as heretofore stated and two mines in Jackson County were reclassified as shown in the amended schedule to bring them more nearly in line with other mines producing coal of a comparable quality.

After said meeting had concluded and all protests and objections to the tentative schedule of proposed minimum prices had been considered and passed upon, a revised schedule of proposed minimum prices to be submitted to the Commission was drafted by the District Board for District 16. Said schedule of proposed minimum prices, together with the data upon which said schedule was computed, was submitted to the Commission and appears in the record as Exhibit No. 145.

In the preparation of the schedule of proposed minimum prices as submitted to the Commission by the District Board for District 16, twenty-one meetings of the District Board were held. In addition to numerous informal committee meetings, one member meeting and thirteen stated committee meetings were also held.

The schedule of proposed minimum prices as amended and finally submitted to the Commission by the District Board for District 16 was approved by the District Board and a copy thereof, together with the amendments thereto was transmitted to each of the Code Members within the district.

Testimony in support of minimum prices proposed by District Board 16 was adduced by two expert witnesses: one a statistician employed by the Board, and the other a member of the Board, both of whom were thoroughly familiar with the marketing and distribution of coals in District 16. Their knowledge of the coals in said District was based upon years of experience in the District. It appears that the members of the District Board of District 16 are all experienced coal men, familiar with producing and marketing coal in said District.

The schedule of proposed minimum prices as submitted to the Commission by the District Board for District 16 contains thirteen (13) size groups. These size groups were determined in the following manner: As far back as the year 1904, the mines in what is now known as District 16, with one exception, made only two screen sizes—lump over 21/2' screens and slack through 21/2" screens. There was considerable demand for straight mine run at that time. The one exception was a newly opened mine which started making a 4" x 21/2" nut coal. Through the ensuing years, due some of the seams containing some grey with but one exception, exactly the same

large lump screen, and others would be forced to follow suit. Eventually 6" x 2½" egg was prepared and has become a most popular size with the domestic consumers. In time, the practice of making pea size was started and the demand for them has steadily grown, especially with the increased use of small stokers. The preparation of these pea sizes resulted in the making of two slack sizes. The sizes shown in the schedule, as amended, were arrived at by including all these various sizes for which a considerable demand has arisen in said District and all of such sizes have a proper place in the schedule.

The District Board for District 16 determined to divide said District into 12 subdistricts, namely: 1-Louisville: 2-Lafayette; 3-Marshall No. 1; 4-Marshall No. 2; 5-Marshall No. 3; 6-Erie; 7-Marshall No. 4; 8-Frederick; 9-El Paso; 10-Jefferson; 11-Jackson, and 12-LaSalle, a particular description of each subdistrict being set forth on pages 5 and 6 of Exhibit 145 to which reference is made.

The boundaries of the Louisville, Lafayette, Erie and Frederick Subdistricts, as determined are the result of long years of marketing experience which has shown that the consuming public would not buy certain of the coals unless a proper price differential exists.

The other subdistricts lie further away from the above four subdistricts, except the four Marshall Subdistricts. The coals mined in them are fairly uniform in relation to each other and their classification and price differentials have been worked out by long marketing experience.

The four Marshall Subdistricts lie within the described boundaries of Louisville and Lafayette Subdistricts. The mines in these Subdistricts are all small truck mines and have intricate marketing problems which require separate classification in order to avoid price exceptions in the price schedule.

The coals produced in District 16 are subbituminous, soft, subject to rapid disintegration in handling and storing. High moisture content causes rapid air slacking after mining and the coals are subject to spontaneous combustion. Such coals consume rapidly under draft and hold fire well, and when once well ignited will not go out until entirely consumed. They are clean burning, have a lower B. t. u. content and tend to disintegrate in fire with considerable loss of heat in the ash.

The coals produced in the Louisville Subdistrict are the best in quality of those produced in Boulder County. The coal is bright, hard and brittle. Lying within the disturbed area, the coals have been cracked in the seam which causes them to break relatively smaller than in other subdistricts.

The coals produced in the Lafayette Subdistrict rank next to Louisville coals. They are bright, fairly hard, break large, industrial use.

The coals produced in the Marshall Subdistrict No. 1 compare favorably with Subdistrict No. 2-Lafayette, but are grouped separately because of location. The coals are bright, fairly hard, break large and there is some grey coal. The mines in this group are truck mines.

The coals produced in the Marshall Subdistrict No. 2 compare in most respects with Subdistrict No. 1-Louisville. but location and excessive brittleness require separate classification. mines in this group are truck mines.

The coals produced in the Marshall Subdistrict No. 3 are quite good in quality, but location and other factors require separate classification. The mines in this group are truck mines.

The coals produced in Erie Subdistrict generally have a good appearance, though not so bright as the preceding group. Such coals are firm in structure and break large.

The coals produced in Marshall Subdistrict No. 4 are from truck mines only. The heat content would rank them with Louisville, but slow ignition, appearance, location and other factors require a lower classification.

The coals produced in Frederick Subdistrict rank slightly under Erie coals. They generally carry alkaline discoloration in vertical cracks, and break somewhat smaller than Erie coals, average higher in moisture and lower in heat content and are softer.

The coals produced in El Paso Subdistrict are all quite similar in most respects. The mines lie close to Colorado Springs, their principal market, and compete with other District No. 16 coals only in the Denver market and that to a very limited extent. Their main competition is from District 17 coals, natural gas and other competitive fuels.

The coals produced in Jefferson Subdistrict classify considerably under the Frederick District and are priced accordingly to enable them to compete in the Denver market. Their appearance, slower ignition, lower heat content, and other characteristics of performance require a lower price.

The coals produced in Jackson Subdistrict compete with other District 16 coals to a very limited extent. The two mines in this group are located in Jackson County in north central Colorado, the only rail outlet being north through Wyoming where District 19 coals are predominant.

The coals produced in LaSalle Subdistrict are poor in quality and require a very low price to market. The mines in this subdistrict are entirely truck mines.

The District Board for District 16 established market areas. A geographical description of such areas, together with their assigned numbers, is particularly set forth at pages 13-17, inclusive, of Exhibit 145. These market areas are,

1937. The one exception is Lyman, Nebraska (143-A). This additional market area was necessary to avoid a price exception in the schedule since a price on slack coal to this one point from only one mine will appear in the final price schedule.

The District Board for District 16 classified the coals of the Code Members within said district. This classification was arrived at in this manner. All Code Members within the district were grouped into subdistricts. Mines with comparable coals in quality, analyses, physical characteristics, characteristics of performance, market acceptability are grouped together to take a common price on each as a rule. These groupings are the result of long marketing experience and were determined by the reaction of the consuming public. The two mines in Jackson County were grouped together by reason of their location being far removed from all the other mines in District 16.

The District Board for District 16 took the Louisville Subdistrict as a base for the reason that such subdistrict had been recognized as the base for many years. The letter "A" appearing in the classification was used to designate the price for each size of coal produced in said subdistrict. Any mine in any subdistrict in the alphabetical list of Code Member mines having the Letter "A" appearing under any size group for that mine will use the Louisville price for that size. This indicates that all mines producing such sizes will take the Louisville subdistrict prices for said sizes.

Long marketing experience has proven that the majority of mines in District 16 can compete on an equal basis on slack coals. This for the reason that most of these sizes are used in industrial plants where the individual characteristics that make price differentials so necessary for domestic use do not materially affect their efficiency.

Exhibit 149 shows the price differentials in cents per ton that apply between the coals in the various subdistricts using the Louisville Subdistrict as the base. This exhibit shows in cents per ton how much under Louisville Subdistrict prices each size will take for each subdistrict or individual mine. Certain mines in certain subdistricts were listed specifically in said Exhibit. Such specific listing is due to the fact that such mines have a price differential on certain sizes which varies from that of the particular subdistrict as a whole. The specific listing was made in order to avoid price exceptions in the schedule. In such cases marketing experience has shown that the sizes in question will not move in satisfactory volume at the subdistrict price for various reasons.

The Black Diamond Mine listed specifically on Exhibit 149 has a price closer together.

as promulgated by the Commission in | differential on Size Group 2 for the and, therefore, occurs mostly in such size group. Such coal is not popular with domestic consumers and its presence in Size Group 2 requires a price differential.

> The Morrison and Grant mines as shown by Exhibit 149 have a price differential on size groups 1 to 6, inclusive, due to individual characteristics of these two coals making them less popular with retail dealers and consumers and requiring a differential to enable same to compete.

> The Marr and Moore mines (Jackson Subdistrict) are grouped together in one subdistrict but priced differently due to differences in the quality of coal produced by them.

> The price differentials were arrived at in this manner. Long marketing experience has shown that a price differential is necessary on most sizes in District 16 to enable the mines in question to market their coals on a fair competitive basis. Many factors, such as appearance, comparative hardness, fracture, comparative rate of ignition, amount of ash, tendency to clinker, heat value, loss of heat in the ash and dustiness, render such differentials necessary. Domestic consumers, as well as retail dealers, also have very distinct ideas of what they prefer in coals and buy accordingly.

> The reason for the varying differentials on the different sizes of coal is due to the purpose for which the various sizes are used. Lump and egg coal are largely used for the same purpose, towit, domestic heating, and will readily sell at the same price generally. Nut and pea coals are used for small heaters and cook stoves to a large extent. Nut coal will take a somewhat higher price than pea coal on account of its larger size and less fines. Modified pea is largely used in domestic stokers. Its size makes it ideal for that purpose and, having had the fines removed, it will make much less fly ash. Slack coals are largely used for industrial purposes.

> Marketing experience over many years has shown that should any size of coal be priced too high, such coal will not move and must be repriced or the making of such size discontinued. Such process in District 16 has continued through many years and price differentials have been changed many times. Domestic consumers in District 16 using the large sizes of coal demand coal as free of fines as possible. This forces the screening out of slack sizes at the mines. Lack of sufficient market for these small sizes has forced the sale of slack at far below cost of production. Increasing use of stokers and of 21/2" pea coal has made it possible to bring prices on large and small sizes gradually

These differentials, with but few exreason that this mine contains con- ceptions, have existed for several years siderable grey coal which breaks large in District 16. The exceptions referred to are that the rapidly increasing demand for egg coal and the consequent falling off in demand for 6" lump coal has made it necessary to price 6'' lump, $2\frac{1}{2}''$ lump and $6'' \times 2\frac{1}{2}''$ egg at the same level in most cases. The demand for egg coal makes it necessary to make 6" lump and experience in recent years has proven that the 6" lump will no longer take a premium price as many dealers, as well as consumers, do not want large coal. 21/2" lump still continues in good demand largely through small retail dealers whose smaller sales make it impractical to have a car each of lump and egg on hand at the same time due to rapid air slacking. They take their egg coal out of the 21/2' lump.

> The schedule of proposed minimum prices, as amended, and submitted to the Commission by the District Board for District 16 contains a schedule of prices for coals for shipment into market areas. This appears at page 11 of Exhibit No. 145. These prices were arrived at in this manner: The present selling prices on Louisville lump, both rail and truck sales, were taken as the base and the weighted average realization on the same was used as the base price using 1937 reported tonnage. The remaining sizes on Louisville coals were priced by deducting the established differentials from the base price on each other size. Next the prices on the various sizes in the Lafayette Subdistrict were determined by subtracting the established differentials from the base Louisville prices and so on in the same manner for each of the other Subdistricts.

> As shown on page 12 of Exhibit No. 145, the District Board proposed minimum prices reflecting the relative values of the various kinds, qualities and sizes of coals produced therein when used for railroad locomotive fuel. This exhibit shows that all kinds, qualities and sizes shall take the same price for that use. to wit, \$2.57 per net ton f. o. b. transportation facilities at the mines, with the exception of mine run size which, when substituted for prepared sizes for the convenience of the producers, shall be priced at \$2.20. The District Board proposed that, except when so substituted, mine run sizes be priced the same as other sizes, to wit, \$2.57 when used for locomotive fuel in view of the possibility that improvements might be made in locomotive burning equipment that would cause that size to be of the same value for locomotive fuel use as the prepared sizes. At the present time mine run size is not desirable for locomotive fuel use in this district, however, the railroads in this district, in order to be of service to the producers when they are unable to load prepared sizes have in the past accepted mine run size in lieu

such mine run was relatively lower than the price for the prepared sizes. The ities at the mines." relative price for such substituted mine run to the prepared sizes was determined by the district board to be \$2.20 as compared to \$2.57.

As shown in Exhibit 147, pages 16 to 19 inclusive, the minimum prices proposed by the District Board for District No. 16 would yield \$2.761 per ton as an average for the production of District This realization was arrived No. 16. at in this manner. The District Board for District No. 16 used the Commission's Form D-1 reports from rail mines which constituted 85.25 per cent of the total production of District 16. In addition to the above reports the monthly reports of the State Coal Mine Inspector for the State of Colorado were used as to truck mine tonnage. The total 1937 production of code members for all mines in District 16, as shown by said reports, was 2,443,790 tons, or 97.26 per cent of the entire production for District 16 in 1937.

Such tonnage was broken down into sizes as to each of the Subdistricts and then applied to the proposed prices for each size. Using the proposed prices for each kind and size, the realization for the entire district was arrived at by multiplying the 1937 tonnage for each size group and kind by its price. After making deductions of 15¢ per ton on coal shipped to the Great Western Sugar Company the realization computed in Exhibit No. 147 for District 16 is \$2.761 per ton. The weighted average cost of production of Price Area 6 as determined by the Commission is \$2.758. The difference, therefore, between realization computed in Exhibit No. 147 and cost is \$.003 per ton.

The District Board for District 16 is composed of members thoroughly experienced in the production and sale of coals in District 16. In the judgment of the District Board and in the opinion of the expert witness for the Board the minimum prices as they appear in the amended schedule conform to all of the requirements of Order 245 of the Commission and to the provisions of Section 4-II (a) of the Act.

And now upon the record in this cause, upon the evidence both documentary and otherwise, and upon the above and foregoing facts found to exist, the Commission finds:

That the schedule of minimum prices. as amended, and submitted to the Commission by the District Board for District 16 should be corrected and revised in order that same may better conform to Order 245 of the Commission and to the provisions of Section 4-II (a) of the Act, and said schedule is in the following respects modified:

Item 1, on page 3 of the schedule.

of prepared sizes provided the price for | listed herein are in cents per net ton of | terests of the consuming public, and do 2,000 pounds, f. o. b. transportation facil- not permit dumping.

> Item 3, on page 3 of the schedule, should be deleted entirely as same is a matter for the coordination proceedings under Section 4-II (b) of the Act and improperly appears in the schedule of minimum prices proposed under Section 4-II (a) of the Act.

> Item 4, on page 3 of the schedule, should be revised to read: "All size designations herein are for round hole screens, or their equivalent. When other types of screens are used, the District Board shall determine the actual size designation of the coal so prepared, with the approval of the Coal Commission."

> Item 7, on page 3 of the schedule, should be deleted entirely. This clause is commonly referred to as a so-called "sugar differential." This appears as a matter to be properly considered in coordination proceedings provided for in Section 4-II (b) of the Act and same at this time improperly appears in the schedule. By deleting this clause the realization for District 16 experiences a slight change. The realization is thereby increased from \$2.761 to \$2.777.

> Page 4 of the schedule should be revised by deleting the words in parenthesis (or 1¼") as the maximum bottom size in Size Groups 7 and 8 and the same language in maximum top size in Size Groups 9 and 11 for the reason that such is unnecessary and confusing.

Page 4 of the schedule should be further revised, in that, the note appearing at the bottom of the page should be revised to read: "When any size of coal is sold, in which the maximum top or bottom size exceeds the sizes scheduled, then such coal must be included in the next higher priced group and priced accordingly."

That the District Board for District 16, as directed in Order 245 of the Commission, proposed minimum prices free on board transportation facilities at the mines for kinds, qualities and sizes of coal produced within the district, and classification of coal and price variations of coal as to mines and consuming market areas.

That the District Board for District 16, as directed in Order 245 of the Commission, submitted to the Commission a schedule of such proposed minimum prices, together with the data upon which same were computed, including, but without limitation, the factors considered in determining the price relationships.

That the minimum prices proposed by the District Board for District 16, as herein modified, reflect as nearly as possible, the relative market value of the various kinds, qualities, and sizes of coal produced within the district, are just and equitable as between producers within

That the minimum prices proposed by the District Board for District 16, for any kind, quality or size of coal for shipment into any consuming market area. as herein modified, are just and equitable between producers within the district.

That the minimum prices proposed by the District Board for District 16, as herein modified, yield a return per net ton for the district equal as nearly as may be to the weighted average of the total costs, per net ton, of the tonnage of Minimum Price Area 6, the Price Area in which District 16 is placed under the Act.

That the schedule of proposed minimum prices, as amended, and submitted to the Commission by the District Board for District 16, as amended, corrected, modified, and revised, as hereinabove set forth, conforms to Order 245 of the Commission and to the requirements of Section 4-II (a) of the Act, and as so amended, corrected, modified, and revised, said schedule should be and the same is hereby approved by the Commission to serve as a basis for the coordination provided for in Section 4-II (b) of the Act. A copy of said schedule, as amended, corrected, revised and modifled, appears in the Appendix for District 16.

APPENDIX FOR DISTRICT NO. 16

Schedule of Minimum Prices, as Modified and Approved, to Serve as a Basis for Coordination

Note: The prices in this schedule are not the final prices that will be established on coal for shipment by Code Members within coal for shipment by Code Members WILDIN this district into consuming markets of this district. In the ultimate establishment of the effective minimum prices, pursuant to subsection (b) of Part II, Section 4 of the Act, the minimum prices in this schedule are subject to such increase or decrease respectively, as may be necessary to carry out the provisions of subsections (a) and (b) of Part II, Section 4 of the Act.

> F. W. McCullough, Secretary.

Issued: December 9, 1938

TABLE OF CONTENTS

Price Instructions and Exceptions. Size Groups. Sub-District Identification. Code Member List with Price Classification. Price List. Market Area Description.

PRICE INSTRUCTIONS AND EXCEPTIONS

Item No. 1.—Prices listed herein are in cents per net ton of 2,000 pounds, f. o. b. transportation facilities at the mine.

Item No. 2.—All prices are subject to the Marketing Rules and Regulations issued by the National Bituminous Coal Commission.

Item, No. 3.—All size designations herein are for round hole screens, or should be revised to read: "The prices the district, have due regard to the in- their equivalent. When other types of

screens are used, the District Board shall determine the actual size designation of the coal so prepared, with the particularly described above as Sub-Disapproval of the Coal Commission.

Item No. 4.-When coal is subjected to any chemical, oil or waxing process, an additional charge of not less than 25 cents per net ton shall be made.

Item No. 5.—When more than one size of coal is loaded in a car, an additional charge of 25 cents per net ton shall be made on the entire weight of the coal loaded in such car.

Item No. 6.-In the sale of coal to destined points outside the boundary of the United States, prices stipulated herein are for payment in U.S. funds.

Size Groups

No.		Single screened sizes	Double sc sizes	
Size group No.	Size	Screen size	Maximum top size	Maxi- mum bottom size
1	Lump	Larger than		
2	Lump	8". 3" to 8" in- clusive.		
3	Lump Egg		Larger than	. ·
	Egg Nut		8'' 8''	x 2½" x 2½"
6	Nut		4"	
7	Nut		3"	x 1½"
5 6 7 8 9	Pea		21/2"	x 11/3"
10	Pea		912"	x 1½" x 1½" x ½" x 0"
11	Slack			x 0" x 0"
12	Slack		Less than	
13	Straight mine run.			x 0"

When any size of coal is sold, in which the maximum top or bottom size exceeds the sizes scheduled, then such coal must be included in the next higher priced size group and priced accordingly.

IDENTIFICATION OF SUB-DISTRICT NUMBERS

Sub-District Number and Identification

- 1. Louisville.—That part of Boulder County, Colorado, lying on and west of the main line of the C. & S. Railroad extending from Broomfield to Boulder, and extending west to the western outcrop of the coal field near the town of Gorham, Colorado.
- 2. Lafayette.—That part of Adams and Boulder counties, Colorado, lying northwest and southwest of Irvington Station on the C. B. & Q. Railroad near the southwest corner of Weld County, including the station of Eversman, the town of Lafayette extending west and southwest to the eastern boundary of the Sub-District #1—Louisville.
- 3. Marshall No. 1.—Part of Boulder County and lies wholly in that area more particularly described above as Sub-District #2—Lafayette.

- County, and lies wholly in that area more | Louisville. trict #1—Louisville.
- 5. Marshall No. 3.-Part of Boulder County, and lies partly in that area described above as Sub-District No. 1-Louisville, and partly in the area described above as Sub-District No. 2-Lafayette.
- 6. Erie.—That part of Weld and Boulder counties, Colorado, lying in township #1 N-Ranges 68 and 69-W-6 P. M.—lying south and west of the Imperial Mine and extending in a northwest-southeast direction through St. Vrains station on the U. P. Railroad, and the town of Erie, all points inclusive, and extending in a southwesterly direction to the eastern boundary of Sub-District #2-Lafayette, and extending in a northwesterly direction to the outcrop of the coal field.
- 7. Marshall No. 4.-Part of Boulder County and lies wholly in that area de- | Sub-District No. 8-Frederick.

4. Marshall No. 2-Part of Boulder | scribed above as Sub-District No. 1-

- 8. Frederick.—That part of Weld County, Colorado, lying in township 1 and 2 N-Range 67 and 68 W-extending in a northeasterly direction from the northeast boundary of Sub-District No. 6-Erie, and including all mines from the Morrison Mine on the southwest to the coal ridge mine in Section 18-Township 2 N-Range 67 W, on the northeast side of the field, both inclusive; also extending in a northwesterly direction to the outcrop to the coal field.
- 9. El Paso.—All mines in El Paso County, Colorado.
- 10. Jefferson.-All mines in Jefferson County, Colorado.
- 11. Jackson.—All mines in Jackson County, Colorado.
- 12. La Salle.—All bituminous coal mines in Weld County, Colorado, not included in Sub-District No. 6-Erie, and

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Separately Shown

Code Member	Mine	Sub- dist.	Kind		P	rice	cl				ion No:		and	l si	20	
		No.		1	2	3	4	5	6	7	8	9	10	11	12	13
Altitudo Fuel Co	Altitude	9	Subbitdo	н	H	H	н	H	-	м	F	G	A	_ A	_],
American Coal Co Black Diamond Fuel Co	Evans	8	do	\mathbf{H}	H	H	H	н	J		F	Ğ	A	A	Ā	J
	Black Diamond	2	do	В	C	В	A	A	В		A	A	A	A	A	
Barnell, Geo. M.	Marr	11	do do do do do do do do	B	В	В	В	В					A		L.	B
Bohlender Coal Co	Bohlender	12	do	S	8	S	S	s	8		S	S	S			8
Boulder Valley Coal Co	Centennial	2	do	$ \mathbf{B} $	В	В	Α	Ā	В		Λ	Α	A	Α	A	B
Boulder Valley Coal Co	Boulder Valley	6	do	F	F	F	F	F	F		F	G	A	A	A	F
Buddy Coal Co	Buddy	12	do	8	8	8	S	$ \underline{s} $	8		S	S	8			8
Busy Bee Coal Co.	Busy Bee	9	do	ĬΉ	브	Щ	Ħ	H	Н	М	F	Ģ	A	A	A	ļ J
Clara Belle Coal Co	Clara Belle	9	ao	Ħ	뷰	빞	Ĥ	H	브	M	E	Ğ	Α	A	A	IJ
Clayton Coal Co	Clayton	6 8	ao	1	Ī.	Į.	Ţ	‡	Į.		F	Ğ	A	A	ļΑ	F
Clayton Coal Co	Morrison	9	do	냁	¥	4	쓔	井	쓔	17	Į.	ŭ	A	Ÿ	ļ٨	Įį
Compt Con Co	City	12	00	Έ	ŭ	프	描	표	描	M	F	ď	A	Λ	A	Į
Comet Coal Coal & Coke Co	Comet Baum	12	uo	10	5	2	9	15	0		5	S	ij		<u></u> -	15
	Cottonwood	ŝ	uo	믚	끆	끞	끞	끞	금	3.7	1	ä	Ą	Α.	١A	11
Cottonwood Coal Co	Crackerjack	4	do	믚	끆	믔	뮤	믚	문	IVI	1	Ų	^	ļ.	ļΛ	13
Danville Coal Co	Olimax	9	do	岩	유	븝	끔	문	딾	24	A	A	4	ļ.	↑	15
Eldorado Coal Co	Eldorado	5	do	믚	믚	무	믚	믚	믚	iVI	r	٦	Ţ	^	A	1 2
Economy Coal Co	Economy	10	uo	L.	T N	T.	T.	T	L.		L.	A	A	ı,	ΙΛ.	15
Gaspar, Louis	Regal	13		17	77	7	7	片	1	->	IN.	I.V	A	7	I 🛧	밤
Graden Coal Co	Graden	1 8	do	답	岩	끕	꿈	남	悜		4	â	7	ı,	I.	맫
High View Coal Co	High View	5	do	按	뉴	按	뀪	片	ř		-	Ä	A	A	A	Ιť
Imperial Coal Co.	Imperial	6	do	F	Ē	F	Ŧ	F	Ē		F	â	A	I 🚡	A	F
Jefferson Coal Co	Virginia	1ŏ	do	Ñ	Ñ	Ñ	Ñ	Ñ	Ñ		N	N	A	Â	Ä	Ň
Jimmy Camp Auld Reckie Fuel Co	Jimmy Camp) j	do	H	Ħ	Ħ	H	H	Ħ	м	F	a	Ā	Â	Â	ľì
KO-Z Coal Co	Fireside	4	do	E	E	E	Ē	E	D		Ā	Ā	Ā	Ā	Ā	Ē
La Salle Coal Co	La Salle	12	do	s	S	ls	S	S	S		S	Īs	18		1_	18
Leyden Lignite CoLouisville-Lafayette Coal Co	Leyden	10	do do do do	N	N	N	N	N	N		N	N	A	A	A	.IN
Louisville-Lafayette Coal Co	Highway	2	do do do do	В	В	В	A	Α	В		A	A	A	A	A	B
McLaughlin Coal Co	Gorham	4]do	E	E	E	Е	E	D	ļ.,	A	A	A	A	A	E
McNeil Coal Corporation	Sterling	8	do	$ \mathbf{H} $	H	H	H	Ħ	J		F	G	A	A	A	Į J
Mayer & Schwaerzler	Diamond	12	do	8	S	8	S	8	s		S	S	S			18
National Fuel Co	Monarch	1	do	I.A.	A	Δ	A	A	Ā		A	ΙĂ	ļĄ	ķ	A	- A
National Fuel Co.	Puritan	.8	do	ᄖ	ᄖ	描	ᄖ	垬	ĮJ		0	լ	A	Λ	A	13
North Park Coal Co	Moore	11	do	15	F	I E	Į.F	F	75		35	ا≒	A A	٠	l	1
Park Coal Co	Park Peerless	6	Juo	£	15	F	투	I,	I.		r	A	A	Ā	Ą	
Pikes Peak Fuel Div. of the Golden	Pikeview	وَ	do	뚭	吊	1::	유	17	Η	17.4	4	A	A A	Ā		E
Cycle Corporation.	I IKOVIOW			1	ш	ш.	ш.		12	141	F	١٩	A	ı,	1^	
Pine Cliff Coal Co.	Pine Cliff	5	do	F	127	Ter	Tr.	T	ᇣ	1	T	Λ	۱,	۱,	Λ	F
Pittsburg Coal Co	Pittsburg	1 7	l do	H	ıп	HI.	Ħ	H	Ħ		I TO	n	1 A	۱۸		10
Pluto Coal Mining Co	Pluto	1 4	do	l E	F	E	Ħ	H	'n	~-	Ā	Ä	1	A	1	12
Premier Coal Co	Premier		do	ਜਿ	Ħ	ñ	ਜਿ	Ħ	Ħ		F	۱ä	A	Ä	I 🛣	H
Rocky Mountain Fuel Co	Industrial		do	A	Ā	Ā	Ā	Ā	Ā		A	A	Ι'n	Ä	A	I A
Rocky Mountain Fuel Co	Columbine	Ĝ	do do do do do do	ĺF	ΪÈ	F	Ϊ́F	F	F	1.	F	lâ	Ä	Â	ΙÀ	lî
Rocky Mountain Fuel Co	Grant) š	do	ΙĒ	ΙĒ	Ē	١Ř	١Ē	ĺŔ	1	Ē	١Ğ	Ā	Ā	ΙÀ	Jī
Ross Coal Co	New Ross	ž	do	Ħ	H	H	H	H	H	1.	۱Ē	Ğ	ΙÃ	Ā	I A	ŀ
Russell, Wm. E. Coal Co	Russell	8	do	Ħ	Ĥ	Ħ	Ħ	Ħ	Ĵ	1.	F	ĬĞ	A	ΙÄ	IA	ر آ
Shamrock Coal Co	Shamrock	8	do	H	H	H	H	H	j	1	F	G	A	A	A	l Ì
Streenan, John Van Winkle Coal Co	New Keystone	9	do	H	H	H	H	H	H	M	F	G	A	A	ΙĀ	J
Von Winkle Coel Co	Van Winkle	10	l do	IN	N	IN	N	IN	IN	1	IN	IN	A	ΙĀ	I A	IN
Van Villano Com Connection	White Ash	l īž	do									s	s			١٤

Prices for Shipment Into Market Areas 101, 102, 104, 105, 107, 108, 109, 110, 111, 112, ing Hampton; thence north including 113, 114, 128, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 143-A, 144, points on the C. R. I. & P. R. R. to but 145, 146, 150

PRICES IN CENTS PER NET TON OF 2,000 POUNDS, AND SIZE GROUP NUMBERS

Size Nos	1	2	3	4	.5	6	7	8	9	10	11	12	13
Price classification	Lump larger than 8"	Lump 3" to 8" (incl.)	Lump 21/4"	Egg, top larger than 8"	Egg 8" x 21/4" or less	Nut 4" x 234"	Nut 8" x 114" or 114"	Pes 2½" x 1½" or 1½"	Mod. Pea 11%" or 11%" x 36"	Black 2½" x 0"	Slack 114" or 114" x 0"	Slack less than	Mine run
AB.	505 4 80	455 430 415	455 430	<u>4</u> 80	430	390 375		320	270	205	195	185	360 335
D	455 440	405 390	405 390	455 440	405 390	365		·					830 325
F	430	380	380	. 430	380	360		305	255				320
H	420	370	370	420	370	350							315 310
K	410 4121⁄2	360 362⅓	360 362⅓≨	410 4121⁄2	360 362⅓	340 3421⁄2							
M N 8	385 335	335 285	335 285	385 335	335 285	315 265	315	280 215	230 155	150			285 205

See "Size group" table. See "Price instructions and exceptions."

Prices Based on Special Uses From All Rail Mines in District 16
PRICES IN CENTS PER NET TON OF 2,000 POUNDS, AND SIZE GROUP NUMBERS

	1	2	3	4	5	6	12
Special use	Lump, larger than 8"	Lump, 3" to 8" (incl.)	Lump, 2½"	Egg, top, larger than 8"	Egg, 8" x 2½" or less	Nut, 4" x 2½"	Mine run
Railroad Locomotive Fuel Railroad Locomotive Fuel	257	. 257	257	257	257	257	257 *220

"Mine Run, when substituted for lump or egg for producers convenience. See "Price instructions and exceptions."

GEOGRAPHICAL DESCRIPTION OF CONSUMING MARKET AREA TO WHICH PRICES APPLY

Market Area No. 101.—Beginning at the South Dakota-Minnesota-Iowa state line running east on the Minnesota-Iowa state line to a point just west of the C. R. I. & P. R. R. just southeast of Glenville, Minnesota; thence northwest, excluding points on the C. R. I. & P. R. R. to and excluding Albert Lea; thence northwest excluding points on the C. M. St. P. & P. R. R. to and excluding Wells; thence west and north excluding points on the C. M. St. P. & P. R. R. to and excluding Mankato; thence west excluding points on the main line of the C. & N. W. R. R. to the point of beginning.

Market Area No. 102.-Points east of a line beginning at a point west of Keokuk. Iowa, on the south bank of the Des Moines River: thence south including points on the C. B. & Q. R. R., passing just east of Maywood, continuing south crossing the C. B. & Q. R. R. east of Palmyra; thence south crossing the Wabash R. R. west of Oakwood, thence southwest including points on the St. L. & H. R. R., crossing the Alton R. R. west of Bowling Green; thence southeast crossing the C. B. & Q. R. R. west of Old Monroe; thence east running between the Wabash and the C. B. & Q. Railroads and continuing to the boundary of Market Area No. 26.

Market Area No. 104.—Beginning at a point southeast of Sioux City excluding Sioux City, running southeast on an airline to a point immediately north of Minden; thence east excluding points on the C. R. I. & P. R. R. to and excluding Atlantic; thence crossing the C. R. I. & P. R. R. east of Atlantic including points thereon, to and including Des Moines; thence crossing the railroad continuing east excluding points on the C. R. I. & P. R. R. to but excluding Grinnell: thence north excluding points on the Minneapolis and St. Louis R. R. to, but including Marshalltown; thence west excluding Minerva Junction; thence north excluding points on the Minneapolis & St. Louis R. R. to and excluding Eldora; thence northwest excluding points on the C. & N. W. R. R., excluding Iowa Falls, Alden, Dows, and Clarion: thence northeast excluding points on the Chicago, Great Western R. R. to and excluding Mason City; thence north excluding points on the C. R. I. & P. R. R. to the Minnesota-Iowa state line; thence west following the state line to the South Dakota-Iowa-Minnesota state line; thence south following the Iowa-South Dakota state line to the point of beginning, excluding Sioux City.

Market Area No. 105.—Beginning at a point just northwest from Eldora; thence north excluding points on the Minneapolis and St. Louis R. R. to and excludious.

ing Hampton; thence north including points on the C. R. I. & P. R. R. to but excluding Mason City; thence southwest including points on the C. G. W. R. R. to and including Clarion; thence southeast on an airline to the point of beginning, including Clarion, Dows, and Alden.

Market Area No. 107.—Beginning at a point just south of Muscatine, Iowa; thence west excluding points on the C. R. I. & P. R. R. to and excluding Thornburg; thence west to a point just south of New Sharon, Iowa; thence south including points on the Minneapolis & St. Louis R. R. to and including Oskaloosa; thence southeast excluding points on the C. R. I. & P. R. R. to and excluding Ottumwa; thence east including points on the C. B. & Q. R. R. to and including Burlington, Iowa; thence north up the Mississippi River to the point of beginning.

Market Area No. 108.—Beginning at a point on the Missouri-Iowa state line due south of Bloomfield, Iowa, running north excluding points on the Wabash to and excluding Ottumwa; thence east excluding points on the C.B. & Q.R.R. to the Mississippi River; thence south down the River to the Iowa-Illinois-Missouri state line; thence northwest and west on the Missouri-Iowa state line to the point of beginning.

Market Area No. 109.—Beginning at a point south of Sioux City, Iowa, running on an airline southeast to a point just north of Minden: thence east including points on the C. R. I. & P. R. R. to and including Atlantic; thence crossing the railroad east of Atlantic and excluding points on the C. R. I. & P. R. R. to and excluding Des Moines; thence continuing east including points on the C. R. I. & P. R. R. to a point just west of Grinnell; thence south excluding points on the Minneapolis and St. Louis R. R. to and excluding Oskaloosa; thence southeast including points on the C. R. I. & P. R. R. to and including Ottumwa; thence northwest including points on the C. B. & Q. R. R. to but excluding Frederic; thence west excluding points on the C. B. & Q. R. R. to the Missouri River; thence north up the Missouri River to the starting point of this area. excluding Council Bluffs, Omaha, and Sioux City.

Market Area No. 110.—Beginning at the Missouri-Iowa state line south of Bloomfield, Iowa; thence north including points on the Wabash R. R. to but excluding Ottumwa; thence northwest excluding points to but including Frederic; thence west including points on the C. B. & Q. R. R. to the Missouri River; thence south following the Missouri River to the Nebraska-Iowa-Missouri state line; thence east on the Iowa-Missouri state line to the point of beginning.

Market Area No. 111.—Omaha and Council Bluffs. Switching limits of Omaha, Nebraska, and Council Bluffs, Iowa. Greater Sioux City.

Market Area No. 113 .- Northwest Missouri. The counties of Andres, Atchison, Buchanan except St. Joseph, Clinton, DeKalb, Gentry, Holt, Nodaway, Platte, and Worth in the state of Missouri.

Market Area No. 114.-St. Joseph, Switching limits of St. Joseph, Missouri. Market Area No. 128-General Description.—Points east of Lamy.

Specific description.—Beginning at the tip of Market Area No. 127 just northeast of Santa Fe; thence running north (east of the D. & R. G. W.) to the New Mexico-Colorado state line; thence east on the Colorado-New Mexico state line to the New Mexico-Oklahoma state line: thence south on the Oklahoma-New Mexico state line to the Texas-New Mexico-Oklahoma state line; thence east on the Oklahoma-Texas state line to a point on the state line just east of Stratford; thence south on the east side of the P. & S. F. to its convergence with Market Area No. 125 at Amarillo, not including Amarillo; thence following the boundary of No. 125 in a southwesterly direction to the boundary line of No. 126 near Melrose; thence following the northern boundary of No. 126 to the boundary of No. 127 just southeast of Kennedy: thence following the boundary line of No. 127 to the point of beginning. Market Area No. 132—General de-scription.—Tennessee Pass and west.

Specific description.—To points in western Colorado and eastern Utah beginning at a point on the Colorado-Wyoming state line at the boundary line of Market Area No. 133 and running west on the Wyoming-Colorado state line to the Colorado-Utah state line; thence south on the Colorado-Utah state line to and including Watson, Rainbow Junction, Rainbow, and Dragon, Utah, to the Utah-Colorado state line; thence south to the junction of Colorado, New Mexico, Arizona and Utah; thence east to a point west of the Farmington branch line, dropping south including said branch line and returning to the state line; thence following the D. & R. G. W. (south of the D. & R. G. W.) to the vertex of Market Area No. 133 south of Antonito, Colorado; thence continuing on the boundary of No. 133 to the point of beginning.

Market Area No. 133-General description.—Colorado east of Tennessee Pass.

Specific description.-To points in Colorado not included in Market Areas 135 and 134 east of a line beginning at the Wyoming-Colorado state line just west of Slater, Colorado; thence on an airline south to a point just southwest of Craig: thence east to a point just west of Steamboat Springs; thence south crossing the D. & R. G. W. just southwest of Orested: thence southeasterly running north of Watts; thence south crossing the D. & R. G. W. just south oming.

of the D. & R. G. W., crossing the D. & R. G. W. between Poncha Junction and Salida, again crossing the D. & R. G. W. west of Mears Junction; thence south to and including Center, Colorado; thence west to and including Creedo; thence southeast to the state line where it converges with the boundary of Market Area No. 131 on the Colorado-New Mexico state line immediately south of Antonito, including Antonito; thence east to the Colorado-Kansas state line; thence north on the Colorado-Kansas state line to the Colorado-Nebraska state line; thence west on the Colorado-Nebraska state line to the starting point of this area.

Market Area No. 134.—Pueblo.

Market Area No. 135.-Denver and environs including Clear Creek Valley to and including Silver Plume.

Market Area No. 136.-Points south of the main line of the Union Pacific Railroad, west of Market Area No. 139 in

Market Area No. 137.—Kansas points on and north of the main line of the Union Pacific excluding Salina and points in Market Area No. 138.

Market Area No. 138.—Salina, Kansas. · Market Area No. 139.—Points on and east of a line from Marysville, Irving, Garrison, Manhattan, Salina (excluding Salina), McPherson, Newton, Wichita, and South Haven, Kansas to the Kansas state line.

Market Area No. 140.—Nebraska points on and east of a line from the Missouri River at Running Water through, but not including Bloomfield, Randolph, to and including Norfolk, thence southeast to and including Scribner, Fremont, and thence through Linwood to Wahoo, Valparaiso, Lincoln, Crete, DeWitt, Beatrice, and Wymore to the Kansas state line, excluding Lincoln and Omaha.

Market Area No. 141.-Lincoln, Nebraska; switching limits of Lincoln.

Market Area No. 142.-Western Nebraska C. & N. W. Wyoming line to, but not including Eli, Nebraska; C. B. & Q. Wyoming line to, but not including Grand Island, Nebraska.

Market Area No. 143.—Remainder of Nebraska, (except Lyman).

Market Area No. 143-A.-Lyman, Nebraska.

Market Area No. 144.-That part of South Dakota west of and including Rapid City and known as the Black Hills District and south of Market Area No. 147.

Market Area No. 145.—That portion of South Dakota east of Rapid City to and west of the Missouri River not included in Market areas Nos. 144 and 147.

Market Area No. 146.—That portion of South Dakota east of the Missouri River not included in Market Area No. 147.

Market Area No. 150 .- State of Wy-

Market Area No. 112.—Sioux City. of Deen; thence running south just west | MINIMUM PRICE AREA No. 6-DISTRICT No. 17

PROPOSED MINIMUM PRICES

District Board No. 17 prepared a schedule of proposed minimum prices which was, in its best judgment, a compliance with Commission's Order No. 245. It then transmitted a copy of these proposed prices to each code member within the District. Thirteen protests were received to these proposed prices. Thereafter, the District Board held meetings, at which time the original protests were considered, and such modifications as were deemed proper by the District Board were made, and are now contained in the proposed schedule. After making these corrections they filed a copy of the proposed schedule of minimum prices, together with the data upon which it was computed, with the Commission, which schedule was received in evidence as Exhibit No. 150.

Testimony in support of the minimum prices proposed by District No. 17 was adduced by expert witnesses, to wit: the chairman and the secretary and treasurer of the District Board, who were thoroughly familiar with the marketing and distribution of coals in District No. 17. Their knowledge of the coals in the District was based upon years of experience in the District.

It appears that the District Board consists of nine members who, with the exception of the labor member, have each had many years of experience in the producing and marketing of coals produced within District 17, and are thoroughly representative of all the coals of that District. They are men who, by reason of their intimate knowledge of these coals, are fully conversant with the price relationships that should exist between the various kinds, qualities and sizes of such coals. The expert witnesses and the other members of the District Board prepared a schedule of proposed prices.

Thé schedule of minimum prices proposed by District No. 17 divides the District into twenty-one sub-Districts, as follows, to wit:

Sub-district Number and Identification

- 1. Walsenburg.-All mines in Huerfano County, Colorado, excluding that portion served by the C. & S. and D. & R. G. W. Railroads, Mayne to and including Bunker Hill, Huerfano County, Colorado.
- 2. Canon No. 1.-Mines in Fremont County, Colorado.
- 3. Canon No. 2.-Mines in Fremont County, Colorado.
- 4. Oak Hills.-That part of Routt County, Colorado, lying on and adjacent to the main line of the D. & S. L. Railroad, at and adjacent to the town of Oak Creek, and extending north along the line of the D. & S. L. Railroad, Phippsburg to Steamboat Springs, Colorado.

- 5. Mount Harris.—That part of Routt and Moffat Counties, Colorado, lying on and adjacent to the main line of the D. &. S. L. Railroad, extending west from Steamboat Springs, Colorado, to the town of Craig in Moffat County, Colorado, and including all mines in Moffat County, Colorado.
- 6. Aguilar.—That part of Huerfano County, Colorado, served by the C. & S. and D. & R. G. W. Railroads, Mayne to Bunker Hill, and that portion of Las Animas County lying north of the Apishapa River, north to Bunker Hill, Huerfano County, Colorado.
- 7. Trinidad No. 1.-Mines in Las Animas County, Colorado, excluding the Aguilar Sub-District.
- 8. Trinidad No. 2.-Mines in Las Animas County, Colorado, excluding the Aguilar Sub-District.
- 9. New Mexico No. 1.-Mines in Colfax County, New Mexico.
- 10. New Mexico No. 2.-Mines in Colfax County, New Mexico.
- 11. Crested Butte.—All mines in Gunnison County, Colorado, lying on and adjacent to the branch lines of the D. & R. G. W. Railroad to the towns of Crested Butte and Baldwin.
- 12. Somerset.-All mines in Delta County. Colorado, located east of a line drawn north and south through the town of Hotchkiss, and those mines in Gunnison County located on and adjacent to the Somerset branch line of the D. & R. G. W. Railroad.
- 13. Cedaredge No. 1.-Mines in Delta County, Colorado, located west of a line drawn north and south through the town of Hotchkiss, Colorado.
- 14. Cedaredge No. 2.-Mines in Delta County, Colorado, located west of a line drawn north and south through the town of Hotchkiss, Colorado.
- 15. Grand Junction No. 1.-That part of Mesa and Garfield Counties, Colorado, lying on or adjacent to the main line of the D. & R. G. W. Railroad, extending from Mack to Cameo, both in Mesa County, and both inclusive.
- 16. Grand Junction No. 2.-That part of Mesa and Garfield Counties, Colorado, lying on or adjacent to the main line of the D. & R. G. W. Railroad, extending from Mack to Cameo, both in Mesa County, and both in-
- 17. Meeker.—All mines in Rio Blanco County, except Rio Blanco Mine.
- 18. Rifle-New Castle.-That part of Garfield County lying north and south of the main line of the D. & R. G. W. Railroad, extending from the town of Rifle to the town of Glenwood Springs. and including Rio Blanco Mine in Garfield County, and the Rio Blanco Mine in Rio Blanco County.
- 19. Durango-Cortez No. 1.-Mines located in La Plata and Montezuma Counties, Colorado.
- 20. Durango-Cortez No. 2.-Mines 10cated in La Plata and Montezuma members in meeting consumers' demands Market Area to which Prices apply, Dis-Counties, Colorado.

San Miguel and Ouray Counties, Colorado.

These sub-Districts are determined by the coal deposits in the State and represent substantially all of the different producing areas within the State. District No. 17 embraces the major portion of the State of Colorado and one northern county in New Mexico. These sub-Districts have been generally known by the names used by the Board for many years, and are recognized and accepted by the producers within the District as suitable coal-producing sub-Districts.

The total tonnage produced in the year 1937 in these sub-Districts was 5,459,831 tons. Of this amount 5,045,447 tons were produced by code members. In other words, during the year 1937 the code members produced 92.4 per cent of the entire production, and the non-code members produced 7.6 per cent.

The evidence shows there is a wide variety in the quality and characteristics of the coals produced in these twenty-one sub-Districts. Generally speaking, domestic sizes of the free-burning coals are the most popular for domestic use. There are, however, exceptions in the case of some of the semi-coking coals enumerated. The semi-coking coals are better adapted to steam and railroad uses. Coking coals are generally found in the extreme southern and southwestern part of Colorado and the northern part of New Mexico. The semi-coking coals are produced on the western slope of Colorado, in the Aguilar District of southern Colorado and from the Sugarite Mine in northern New Mexico.

It appears from the evidence and from Exhibits Nos. 150 and 154 that District Board No. 17 classified all of the coal in the District by placing the same in seven grade classifications ranging from Grade "A" to Grade "F," with a sub-class "C-1". These classifications resulted from this study of the quality of each size of the coal produced, and from this study it was found that the maximum range of seven prices was adequate to cover the variations in quality. In making these classifications, the Board took into consideration the appearance, structure, friability, marketability, based on past experience. consumers' acceptance, plant performance, the way the coal had withstood transportation en route to destination. the manner in which it stores in the hands of the trade, and, in a very few cases, they took into consideration analyses of the coal. However, analysis of coal was given little or no weight in such determination. In the schedule of proposed prices the letter "A" represents the highest price in each size group.

District No. 17 in its schedule of proposed prices sets up seventeen size groups. as will be shown in Exhibit No. 154. These size groups were determined by the Board from the past experience of the over a long period of years. These size trict 17."

21. Montrose.—All mines in Montrose, groups compare almost identically with the size groups established under prior regulated prices.

> The evidence shows that District Board No. 17 used as a basis, to establish the proposed f. o. b. mine prices set forth in the schedule, standard 3" lump, listed as "B" coal, from the Walsenburg District, as a starting point in deciding upon the price for this 3" standard lump coal in this sub-District, and related all other size differentials to that price. The prices proposed for the various kinds, qualities and sizes of coal above or below the price of the standard 3" lump, were arrived at by taking into consideration the kinds and qualities of each coal in each of the sizes prepared in each sub-District, applying thereto the standard differentials which had been recognized and accepted for a period of many years. In making these determinations the District Board took into consideration the appearance, structure, friability, marketability, based on past experience, consumers' acceptance. past performance, the way the coal withstands transportation en route to destination, the manner in which it stores in the hands of the trade, and, in rare instances, considered chemical analyses.

> It appears from the evidence that District Board No. 17 sent out questionnaires to all the known producers of coal within the District who produced coal during the year 1937, to ascertain the total tonnage produced for that year. The Commission had previously determined the average weighted cost for minimum price area No. 6 to be \$2.758 per ton. The District Board computed the total realization that would be derived from the sale of the tonnage of the various kinds, qualities and sizes of coal that were known to be sold in the year 1937, at the prices proposed in the schedule. This realization as shown in Exhibits Nos. 153, 154 and 154-A, yields an average weighted cost of \$2.78 per ton, which amount was determined by the Board to be as nearly as may be to the average weighted cost of the minimum price area.

> The evidence shows that the price between the various sizes, kinds and qualities of coal as reflected in the proposed price schedule, as amended, represents the combined judgment of all of the members of the District Board, and that said differentials are the ones that have prevailed for the most part for many vears.

> The following Exhibits were offered in evidence:

> Exhibit No. 150 .- "Letter of August 23. 1938, from F. O. Sandstrom to All Code Members in District No. 17 enclosing copy of revised proposed price schedule for District."

> . Exhibit No. 151.—"Booklet showing Geographical Description of Consuming

mated realization to be derived from Proposed Minimum Prices using as a basis, 1937 Production reported by Code Members of District No. 17."

Exhibit No. 153.—"Table showing '1937 Production of Code Members of District 17 broken down to size groups showing

the respective realization and the weighted average realization per ton for the District at prices proposed by District No. 17.'"

Exhibit No. 154.—"Chart showing 'District 17 Price Classification."

Exhibit No. 154-A .- "Chart showing 'Amendment to Price Classification' for District No. 17."

Exhibit No. 155 .- "Certified copy of Resolution from Minutes of meeting of District Board No. 17-held August 1, 2 and 3, 1938."

Exhibit No. 156.—"Report of Mr. Whiteside to Bituminous Coal Producers Board for District No. 17."

Exhibit No. 157 .- "Blueprint-–Fremont County, Colorado, Coal Fields."

Exhibit No. 158.—"Table showing 'Freemont County Production,' under headings: 1937 Total: December, 1937; January, 1938; January, 1937."

Exhibit No. 159.—"Table showing 'Productive Capacity', under headings: Sub-District No. 2; Inspectors Report; Estimated: Sub-District No. 3; Inspectors Report; Estimated."

Exhibit No. 171 -- "Table showing 'Production by Years from Canon City Sub-Districts, etc."

Exhibit No. 172.—" 'Proximate Analyses of Samples from Corley Mine No. 6."

Exhibit No. 173.—" 'Proximate Analyses of Samples from Nushaft and Rex Carbon Mines."

Exhibit No. 174 .- "Protest of classification by McNeil Coal Corporation."

Items 10 and 11, as contained on page 4 of Exhibit No. 150, are commonly referred to as so-called "sugar differentials". The language contained in the item does not refer specifically to sugar companies, but states that all industries in certain specified counties containing certain specific storage facilities and placing those facilities at the disposal of the producers, may purchase coal at a certain stated price reduction below the list price in the price schedule. It appears from the evidence that most of the industries of this description in the specified counties, however, are sugar companies. It appears from the record that the sugar companies operate only two or three months in the fall after the beets are harvested, and consume their annual requirements of coal within this period. It also appears that it is impossible to furnish the requisite tonnage of slack coal in this particular period. The companies maintain storage facilities in certain cases under water and purchase surplus slack from the operators during the winter duced at all mines listed in the schedule changes in classifications and prices:

Exhibit No. 152.—"Chart showing 'Esti-| months after the active production sea-| in Canon #2 Sub-District on each of the son of sugar is over, and also gives the coal producers the privilege of shipping their surplus slack during other periods of the year. From the evidence it appears that in a certain sense this practice is a seasonal one. Due to the fact that natural gas is available to most of the sugar plants, it is thought by some of the producers that it is necessary to keep the coal price sufficiently low so that coal can compete with other forms of fuel. This being the state of the record, it appears that these special differentials are not proper differentials to be considered in this hearing, but are such differentials as should be considered in accordance with Section 4, part II (b), of the Act, under coordination.

The Canon Black Diamond Coal Company, the Nushaft Canon Coal Company, Rex Carbon Coal Company, Caldirola Coal Company and Douglas Corley. Jr., producers in sub-District No. 2 of Canon City filed protest before District Board No. 17 and subsequently before the Commission at this hearing. The protests filed and heard were to classification and minimum prices proposed by District Board No. 17.

It appears from the evidence in this record that it was admitted by both, protestants and District Board, that a difference in quality between Canon No. 1 and Canon No. 2 coals exists. The only point in controversy is the exact determination of this difference reflected in cents per ton.

The evidence shows that District Board No. 17 recognized and admitted a difference in the quality between these two coals and, according to their Exhibit #150, proposed differentials of 40¢ per ton for Size Groups 1 to 4, inclusive; 25¢ per ton for Size Group 5; 20¢ per ton for Size Group 6; 10¢ per ton for Size Group 8, with no differential for Size Groups 9 to 17, inclusive.

The record shows that the differentials obtaining in the past periods of nonregulation varied from \$1.25 to \$1.50 per ton on lump coal.

The evidence of the protestants indicates that a differential of 50¢ to 75¢ per ton on lump coal, Size Groups Nos. 1, 2, 3 and 4; 25¢ per ton on Size Groups 5 and 6, and 10¢ per ton on Size Group 8, would be proper. There is no evidence showing any differential for Size Groups 9 to 17, inclusive.

The Commission finds upon the evidence in the record that the coals produced in Canon No. 2 District should have a differential below Canon No. 1 District, as follows:

50¢ per ton on Size Groups 1, 2, 3, 4. 25¢ per ton on Size Groups 5, 6. 10¢ per ton on Size Group 8.

with no differential approved for Size Groups 9 to 17, inclusive.

The proposed prices of the coals pro-

foregoing Size Groups be, and the same are hereby, modified accordingly, and the classifications of such coals are changed to reflect these modifications. Such revised classifications and prices appear in the Appendix for District No.

A protest was filed before the Commission by McNeil Coal Corporation asking that a differential be established for its coal below prices of the coals of Mt. Harris sub-District No. 5, as follows:

Size Groups 1, 2, 3, 4, 50¢ per ton. Size Group 5, 30¢ per ton.

Size Group 6, 35¢ per ton.

Size Group 8, 15¢ per ton.

Size Groups 11, 15, 17, 10¢ per ton.

The evidence submitted by the protestant is confined entirely to the quality of lump coal prepared at the McNeil Coal Company mine as against the quality of lump coal prepared in the Mt. Harris sub-District. The record indicates that the protestant's mine is on a separate and distinct seam from all other operations in the Mt. Harris District; that the coal is duller in appearance and softer; also, it possesses a higher ash content than other Mt. Harris coals.

Analyses submitted by this protestant indicate a higher ash content of approximately 4 per cent in the protestant's coal than the composite ash as shown for the other Mt. Harris District mines.

The Commission finds upon the evidence in the record that the coal of the McNeil Coal Corporation should be classified and priced under Mt. Harris sub-District mines as follows: 25¢ per ton on Size Groups 1, 2, 3, 4; 20¢ per ton on Size Group 5; 15¢ per ton on Size Group 6: 10¢ per ton on Size Group 8: with no differential on Size Groups 9 to 17, inclusive. The proposed prices of the coals produced at the mine of the Mc-Neil Coal Corporation on each of the foregoing size groups are hereby modified accordingly, and the classifications of such coals are changed to reflect these modifications. Such revised classifications and prices are set forth in the Appendix for District No. 17.

A protest was filed before the Commission by the Southern Colorado Power Company requesting that protestant, a consumer, be allowed the so-called "sugar differential" which the schedule proposes for certain sugar companies. This protest is disposed of by the deletion of the "sugar differential" clauses from the schedule in accordance with the findings of the Commission hereinafter made.

The Commission finds, in accordance with the recommendation of the District Board for District No. 17, which is supported by the evidence, that the proposed price schedule (Exhibit #150, pp. 8, 11, 12, 18 and 19) should be, and the same is hereby, modified by the following

Code member	Mine name	Subdist.	Page	Column	Classification
American Smelt. & Ref. Co Colo. Fuel & Iron Co Deldosso Coal Co Dick Coal Co Dolinar & Fatur. Santa Fe Coal Co St. Louis, Rky. Mtn. & Pac	Bon Carbo Morley Sopris Dix Bloom Santa Fe. Sugarite	88888	8 11 11 12 12 18 19	15 15 15 15 15 15	Letter C to read A. Letter A to read C.

The foregoing revised classifications and prices appear in the Appendix for District No. 17.

The Commission finds from the evidence that the proposed price schedule (Exhibit No. 150, p. 11), where it shows that the Colorado Fuel and Iron Company, Frederick Mine, is now listed as sub-District No. 7, should be amended and modified to read sub-District No. 8.

The Commission finds that page 21 of Exhibit No. 150 should be amended so as to include a classification of "A-1" preceding the classification "A," and in classification "A-1," Size Group Number 13, should be the figures "250;" also, to include a classification of "D-1" preceding the classification "D," and in classification "D-1," Size Group Number 6, should be inserted the figures "345;" also, to include a classification of "E-2" following the classification "E-1," and in classification "E-2," Size Group Number 5, should be inserted the figures "345," and under Size Group Number 6 should be inserted the figures "335."

The Commission finds from the evidence that page 3 of Exhibit No. 150, reading as follows, should be deleted:

"DESCRIPTION OF SUB-MARKET AREAS

"132-A. Counties of Archuleta, Dolores, La Plata, Montezuma, San Juan and San Miguel, Colorado.

"133-A. City of Steamboat Springs, (Routt County) Colorado, and rail points west to, but not including, Craig (Moffat County), Colorado.

"133-B. City of Craig (Moffat County), Colorado.

"133-C. Cities of Leadville, Salida and Climax, Colorado, and intermediate points.

"133-D. All points in the Counties of Logan and Morgan, Colorado.

'133-E. Destinations on and south of the line of Denver & Rio Grande Western Railroad beginning just south of Mears Junction in Market Area 133 to and including Alamosa, thence west to Creede, thence following the line of the D. & R. G. W. Railroad south from Alamosa to and including Antonito in Market Area 133, thence following the line of the D. & R. G. W. Railroad south of Alamosa to and including Santa Fe, New Mexico, in Market Area 128."

The Commission finds that Item 1 on page 4 of Exhibit No. 150, should be deleted.

The Commission finds that Item 4 of Exhibit No. 150, reading as follows, should be deleted:

"All prices herein are per net ton of 2,000 pounds f. o. b. transportation facilities at the mines, unless otherwise designated."

and insert in lieu thereof the following language:

"The prices listed herein are in cents per net ton of 2,000 pounds f. o. b. transportation facilities at the mines.'

The Commission finds that Item 5, page 4, of Exhibit No. 150, reading as follows, should be deleted:

"If any size is made for which a price is not designated herein, such size shall be sold at the price applicable to the next larger size,"

and insert in lieu thereof the following language:

"When any size of coal is sold in which the maximum top or bottom size exceeds the sizes scheduled, then such coal must be included in the next higher priced size group and priced accordingly."

The Commission finds that Item 6. page 4, of Exhibit No. 150, reading as follows, should be deleted:

"Not less than the actual cost of transportation of coal over the ordinary loading facilities at the mines to any consumer shall be added to the established minimum prices f. o. b. transportation facilities at the mines. cost of such transportation is subject to review by the Commission on complaint or upon its own motion. In every case reviewed by the Commission the code members shall have the burden of establishing or proving that the cost so charged was an accurate cost for actual service rendered."

The Commission finds that Item 9, page 4, of Exhibit No. 150, reading as follows, should be deleted:

"The price of \$2.50 applies on 'bone' coal from all Colorado sub-districts. 'Bone' coal is defined as slatey coal or carbonaceous shale carrying a minimum of 25 per cent ash."

The Commission finds that Items 10 and 11, on page 4 of Exhibit No. 150, reading as follows, should be_deleted:

"10. Industries located in the Counties of Logan and Morgan, Colorado, Sub-Market Area 133-D, which industries have storage facilities accommodating 30 per cent of their annual coal requirements and who place those facilities at | Commission, submitted to the Commisthe disposal of the producers, permit- sion a schedule of such proposed mini-

ting producers to make shipments at their convenience during the year, may be granted a price of 30 cents per net ton below the standard list prices on slack coal.

"11. Industries located in the County of Delta, Colorado, Sub-Market Area 132, which industries have storage facilities accommodating 30 per cent of their annual coal requirements and who place those facilities at the disposal of the producers, permitting the producers to make shipments at their convenience during the year, may be granted a price of 15 cents per net ton below the standard list prices on slack coal."

The Commission finds that page 5 of Exhibit No. 150 should be amended so that the first item at the bottom, which reads as follows:

"When any size of coal is sold in which the maximum top or bottom size exceeds the sizes scheduled above, then such coal must be included in the next higher size group and priced accordingly,"

should be deleted.

The Commission finds that the changes and modifications hereinbefore made in the price schedule will increase the realization in the amount of 8.44 cents. This increased amount added to the realization computed by the District Board shown by Exhibits Nos. 152 and 153, totals \$2.8644 per ton. The evidence in the record shows that it will not disturb the price relationships between the various kinds, qualities and sizes of coal if a certain number of cents per ton be added to or deducted from all of the prices shown in the schedule, in order to bring the realization to a figure that will yield as nearly as may be the weighted average cost of production of the price area.

The Commission finds that a reduction of 10 cents per ton should be made on all prices contained in the proposed price schedule as hereinbefore modified, in order to arrive at a realization more nearly equal to the weighted average cost of Minimum Price Area No. 6. The price schedule is amended accordingly and, as revised, is set forth in Appendix for District No. 17. The resulting realization is \$2.7644 as compared with the weighted average cost of Minimum Price Area No. 6 of \$2.758.

And now, upon the record herein, upon the evidence, both documentary and otherwise, and upon the above and foregoing facts found to exist, the Commission finds:

That the District Board for District No. 17, as directed in Order No. 245 of the Commission, proposed minimum prices free on board transportation facilities at the mines for kinds, qualities and sizes of coal produced within the District. classification of coal and price variations as to mines and consuming market areas.

That the District Board for District No. 17, as directed in Order No. 245 of the mum prices, together with the data upon which same were computed, including, but without limitation, the factors considered in determining the price relationships.

That the minimum prices proposed by the District Board for District No. 17, as herein modified, reflect, as nearly as possible, the relative market value of the various kinds, qualities and sizes of coal produced within the district; are just and equitable as between producers within the District; have due regard to the interests of the consuming public, and do not permit dumping.

That the minimum prices proposed by the District Board for District 17 for any kind, quality or size of coal for shipment into any consuming market area, as herein modified, are just and equitable between producers within the District.

That the minimum prices proposed by the District Board for District 17, as herein modified, yield a return per net ton for the District equal as nearly as may be to the weighted average of the total costs per net ton of the tonnage of Minimum Price Area 6, the price area in which District 17 is placed under the Act.

That the schedule of proposed minimum prices, as amended, and submitted to the Commission by the District Board for District 17, as amended, corrected. modified and revised, as hereinabove set forth, conforms to Order No. 245 of the Commission and to the requirements of Section 4-II (a) of the Act, and as so amended, corrected, modified and revised, said schedule should be, and the same is hereby, approved by the Commission to serve as a basis for the coordination provided for in Section 4-II (b) of the Act. A copy of said schedule as amended, corrected, revised and modified appears in the Appendix for District 17.

APPENDIX FOR DISTRICT NO. 17

Schedule of Minimum Prices, As Modified and Approved, to Serve as a Basis for Coordination

Note.—The prices in this schedule are not the final prices that will be established on coal for shipment by Code Members within this district into consuming markets of this district. In the ultimate establishment of the effective minimum prices, Pursuant to subsection (b) of Part II, Section 4 of the Act, the minimum prices in this schedule are subject to such increase or decrease respectively, as may be necessary to carry out the provisions of subsections (a) and (b) of Part II, Section 4 of the Act.

F. W. McCullough,

Secretary.

Issued: December 9, 1938.

TABLE OF CONTENTS

Code members. Identification of sub-districts. Prices. Size groups. Instructions and exceptions. Description of consuming market areas.

PRICE INSTRUCTIONS AND EXCEPTIONS

1. All prices are subject to the Marketing Rules and Regulations issued by the National Bituminous Coal Commission.

- payment in U.S. funds.
- cents per net ton of 2,000 pounds, f. o. b. transportation facilities at the mine.
- 4. When any size of coal is sold, in which the maximum top or bottom size exceeds the sizes scheduled, then such coal must be included in the next higher priced size group and priced accordingly.
- 5. An extra charge of 25¢ per ton shall be made for the "bulkheading" of coal in railroad cars, that is, permitting the loading of two or more sizes in the same car.
- 6. Where coal is subject to any chemical, oil or waxing process an additional charge of not less than 10¢ per ton shall be made on nut coal and all larger sizes, and not less than 25¢ per ton on pea and slack.
- 7. Washed coal all sizes from all subdistricts shall sell at 10¢ per net ton over the price on raw coal.

Size Groups

Size	•	Double scr	eened sizes
group No.	Lump maximum screen size	Maximum top size	Maximum bottom size
1 2 3 4 5 6 7 7 8 9 10 11 12 13 14 15 16 17	Mine run Modified Mine Run Modified Mine Run	8" 6" 8" 6" 3" 114" 114" 114" 114" 114" 8"	3" 3" 1\5" 1\5" 2\2" 1' 1' 0" 0" 0" 0" 0"

All sizes are predicated on screen descriptions as published in the railroad tariffs. All sizes are predicated on perforated plates and when bar screens are used, the space between bars must conform to the standard equivalent.

IDENTIFICATION OF SUB-DISTRICT NUMBERS Sub-District Number and Identification

- 1. Walsenburg.—All mines in Huerfano County, Colorado, excluding that portion served by the C. & S. and D. & R. G. W. Railroads, Mayne to and including Bunker Hill, Huerfano County, Colorado.
- 2. Canon No. 1.—Mines in Fremont County, Colorado.
- 3. Canon No. 2.-Mines in Fremont County, Colorado.
- 4. Oak Hills,-That part of Routt County, Colorado, lying on and adjacent to the main line of the D. & S. L. Railroad, at and adjacent to the town of Oak Creek, and extending north along the line of the D. & S. L. Railroad, Phippsburg to Steamboat Springs, Colorado.
- and Moffat Counties, Colorado, lying on rado.

- 2. In the sale of coal to destined points and adjacent to the main line of the outside the boundary of the United D. & S. L. Railroad, extending west from States, prices stipulated herein are for Steamboat Springs, Colorado, to the town of Craig in Moffat County, Colorado, and 3. The prices listed herein are in including all mines in Moffat County, Colorado.
 - 6. Aguilar.—That part of Huerfano County, Colorado, served by the C. & S. and D. & R. G. W. Railroads, Mayne to Bunker Hill, and that portion of Las Animas County, lying north of the Apishapa River, north to Bunker Hill, Huerfano County, Colorado.
 - 7. Trinidad No. 1.-Mines in Las Animas County, Colorado, excluding the Aguilar Sub-District.
 - 8. Trinidad No. 2.-Mines in Las Animas County, Colorado, excluding the Aguilar Sub-district.
 - 9. New Mexico No. 1.-Mines in Colfax County, New Mexico.
 - 10. New Mexico No. 2.—Mines in Colfax County, New Mexico.
 - 11. Crested Butte.—All mines in Gunnison County, Colorado, lying on and adjacent to the branch lines of the D. & R. G. W. Railroad to the towns of Crested Butte and Baldwin.
 - 12. Somerset.—All mines in Delta County, Colorado, located east of a line drawn north and south through the town of Hotchkiss, and those mines in Gunnison County located on and adjacent to the Somerset branch line of the D. & R. G. W. Railroad.
 - 13. Cedaredge No. 1.-Mines in Delta County, Colorado, located west of a line drawn north and south through the town of Hotchkiss, Colorado.
 - 14. Cedaredge No. 2.-Mines in Delta County, Colorado, located west of a line drawn north and south through the town of Hotchkiss, Colorado.
 - 15. Grand Junction No. 1.—That part. of Mesa and Garfield Counties, Colorado, lying on or adjacent to the main line of the D. & R. G. W. Railroad, extending from Mack to Cameo, both in Mesa County, and both inclusive.
 - 16. Grand Junction No. 2.—That part of Mesa and Garfield Counties, Colorado, lying on or adjacent to the main line of the D. & R. G. W. Railroad, extending from Mack to Cameo, both in Mesa County, and both inclusive.
 - 17. Meeker .-- All mines in Rio Blanco County, except Rio Blanco Mine.
 - 18. Rifle-New Castle.-That part of Garfield County lying north and south of the main line of the D. & R. G. W. Railroad, extending from the town of Rifle to the town of Glenwood Springs, and including Rio Blanco Mine in Garfield County, and the Rio Blanco Mine in Rio Blanco County.
 - 19. Durango-Cortez No. 1.-Mines located in La Plata and Montezuma Counties, Colorado.
 - 20. Durango-Cortez No. 2.-Mines located in La Plata and Montezuma Counties, Colorado.
 - 21. Montrose.--All mines in Montrose, 5. Mount Harris.—That part of Routt San Miguel and Ouray Counties, Colo-

Alphabetical List of Code Members Showing Price Classification by Sizes for All | GEOGRAPHICAL DESCRIPTION OF CONSUMING Uses Except as Separately Shown—Continued

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See "Price instructions and exceptions."

MARKET AREA TO WHICH PRICES APPLY

Market Area No. 33.—Beginning at the Minnesota-Iowa-Wisconsin state line running west on the Minnesota-Iowa state line to a point west of the C. M. St. P. & P. R. R.; thence northwest including all points on the C. M. St. P. & P. to but excluding Mankato; thence east excluding points on the main line of the C. & N. W. to the Mississippi River: thence down the Mississippi River to the starting point of this area.

Market Area No. 34.-Beginning at a point just south of and including Mankato; thence east including all points on the main line of the C. & N. W. to the Mississippi River including Minnesota City; thence northwest following the Mississippi River to a point just south of Hastings, Minn.; thence north including points on the C. M. St. P. & P. R. R. to and including Stillwater and Duluth Junction; thence west and southwest including points on the M. St. P. & S. S. M. to and including Minneapolis; thence southwest to a point just west of Chaska. including Chaska; thence south including points on the Minneapolis and St. Louis R. R. to and including Montgomery; thence southwest including points on the C. M. St. P. & P. R. R. to and including Kasota; thence south including points on the C. M. St. P. & P. from Kasota to Mankato, inclusive, the starting point of this

Market Area No. 101.—Beginning at the South Dakota-Minnesota-Iowa state line running east on the Minnesota-Iowa state line to a point just west of the C. R. I. & P. R. R. just southeast of Glenville, Minnesota; thence northwest, excluding points on the C. R. I. & P. R. R. to and excluding Albert Lea; thence northwest excluding points on the C. M. St. P. & P. R. R. to and excluding Wells; thence west and north excluding points on the C. M. St. P. & P. R. R. to and excluding Mankato; thence west excluding points on the main line of the C. & N. W. R. R. to the point of beginning.

Market Area No. 104 - Beginning at a point southeast of Sioux City, excluding Sioux City, running southeast on an airline to a point immediately north of Minden; thence east excluding points on the C. R. I. & P. R. R. to and excluding Atlantic; thence crossing the C. R. I. & P. R. east of Atlantic including points thereon, to and including Des Moines, thence crossing the railroad continuing east excluding points on the C. R. I. & P. R. R. to but excluding Grinnell; thence north excluding points on the Minneapolis and St. Louis R. R. to, but including Marshalltown; thence west excluding Minerva Junction; thence north excluding points on the Minneapolis & St. Louis R. R. to and excluding Eldora; thence northwest excluding points on the C. & N. W. R. R., excluding Iowa Falls, Alden, Dows, and Clarion; thence northeast excluding points on the Chicago, Great Western R. R. to and excluding Mason City;

thence north excluding points on the C. R. I. & P. R. R. to the Minnesota-Iowa state line; thence west following the state line to the South Dakota-Iowa-Minnesota state line; thence south following the Iowa-South Dakota state line to the point of beginning, excluding Sioux City.

Market Area No. 105.—Beginning at a point just northwest from Eldora; thence north excluding points on the Minneapolis and St. Louis R. R. to and excluding Hampton; thence north including points on the C. R. I. & P. R. R. to but excluding Mason City; thence southwest including points on the C. G. W. R. R. to and including Clarion; thence southeast on an airline to the point of beginning, including Clarion, Dows, and Alden.

Market Area No. 106 .- Points in eastern Iowa. Beginning at the northeast corner of Iowa on the Mississippi River: thence south down the river, excluding points on the C. M. St. P. & P. R. R. from Clinton to Davenport, both excluded; thence west following the river to a point south of Muscatine; thence west including points on the C. R. I. & P. R. R. to and including Thornburg; thence west on an airline to a point southwest of New Sharon, including New Sharon; thence north including points on the Minneapolis & St. Louis R. R. to but excluding Marshalltown; thence west including Minerva Junction; thence north including points on the Minneapolis & St. Louis R. R. to and including Hampton; thence north excluding points on the C. R. I. & P. R. R. to Mason City but including Mason City; thence north to the Minnesota-Iowa state line, including points on the C. R. I. & P. R. R.; thence east following the Minnesota-Iowa state line to the point of beginning.

Market Area No. 107.—Beginning at a point just south of Muscatine, Iowa; thence west excluding points on the C. R. I. & P. R. R. to and excluding Thornburg; thence west to a point just south of New Sharon, Iowa; thence south including points on the Minneapolis & St. Louis R. R. to and including Oskaloosa; thence southeast excluding points on the C. R. I. & P. R. R. to and excluding Ottumwa; thence east including points on the C. B. & Q. R. R. to and including Burlington, Iowa; thence north up the Mississippi River to the point of beginning.

Market Area No. 108.—Beginning at a point on the Missouri-Iowa state line due south of Bloomfield, Iowa; running north excluding points on the Wabash to and excluding Ottumwa; thence east excluding points on the C. B. & Q. R. R. to the Mississippi River; thence south down the River to the Iowa-Illinois-Missouri state line; thence northwest and west on the Missouri-Iowa state line to the point of beginning.

Market Area No. 109.—Beginning at a point south of Sioux City, Iowa running on an airline southeast to a point just on the Missouri Pacific to the south;

points on the C. R. I. & P. R. R. to and including Atlantic; thence crossing the railroad east of Atlantic and excluding points on the C. R. I. & P. R. R. to and excluding Des Moines: thence continuing east including points on the C. R. I. & P. R. R. to a point just west of Grinnell; thence south excluding points on the Minneapolis and St. Louis R. R. to and excluding Oskaloosa; thence southeast including points on the C. R. I. & P. R. R. to and including Ottumwa; thence northwest including points on the C. B. & Q. R. R. to but excluding Frederic; thence west excluding points on the C. B. & Q R. R. to the Missouri River; thence north up the Missouri River to the starting point of this area, excluding Council Bluffs, Omaha, and Sioux City.

Market Area No. 110.—Beginning at the Missouri-Iowa state line south of Bloomfield, Iowa; thence north including points on the Wabash R. R. to but excluding Ottumwa; thence northwest excluding points to but including Frederic; thence west including points on the C. B. & Q. R. R. to the Missouri River; thence south following the Missouri River to the Nebraska-Iowa-Missouri state line; thence east on the Iowa-Missouri state line; to the point of beginning.

Market Area No. 111.—Omaha and Council Bluffs. Switching limits of Omaha, Nebraska, and Council Bluffs, Iowa.

Market Area No. 112.—Sioux City. Greater Sioux City.

Market Area No. 113.—Northwest Missouri. The counties of Andres, Atchison, Buchanan except St. Joseph, Clinton, De Kalb, Gentry, Holt, Nodaway, Platte, and Worth in the state of Missouri.

Market Area No. 114.—St. Joseph, Switching limits of St. Joseph, Missouri. Market Area No. 115.—North Missouri. Bounded on the north by the Iowa-Missouri state line; bounded on the east by the territory west of but not including towns on the main line of the C. B. & Q. Railroad, St. Louis north to the Iowa state line: on the west by the western county lines of Harrison, Daviess, Caldwell, and Clay counties; and on the south by the south boundary lines of Clay, Ray, Saline, Howard, Boone, Callaway, Montgomery, Warren, and St. Charles counties, and including the cities of Boonville, Missouri, and Jefferson City, Missouri, located on the south bank of the Missouri River.

Market Area No. 116.—Greater Kansas City. In Wyandotte and Johnson Counties, Kansas; Missouri Pacific River Route to a point approximately even with the Western University Annex on the West; thence to Welborn on the Leavenworth Electric Line; thence to Muncie on the Union Pacific and K. S. K. V. & W.; thence to Turner on the A. T. & S. F.; thence through Shawnee to Merriam on the Frisco; thence to Overland Park on the Missouri & Kansas Railroaod. In Jackson County, Missouri; Martin City on the Missouri Pacific to the south:

thence north excluding points on the north of Minden; thence east including Grand View on the K. C. S. and Frisco; C. R. I. & P. R. R. to the Minnesota-points on the C. R. I. & P. R. R. to and Raytown on the C. R. I. & P.; Independ-Town state line; thence west following including Atlantic; thence-crossing the ence on the Alton and Missouri Pacific.

Market Area No. 124.—States of Oklahoma and Texas except that portion described in Market Areas Nos. 125 and 128.

Market Area No. 125—General description.—Clovis, New Mexico to Amarillo, Brownwood, Spofford and west to El Paso, including the Pecos Valley Lines; Clovis, New Mexico to Pecos, Texas, and Southern Pacific Lines, Torrance to El Paso.

Specific description.—Following the eastern boundary of Market Area No. 129 from a point just southeast of Belen Junction at the convergence of Market Areas Nos. 126 and 129 to El Paso, crossing the S. P. between El Paso and Fort Bliss, and crossing the S. P. just west of Alfalfa; thence running in a southeasterly direction south of the T. & N. O. (S. P.) crossing the P. & S. F. just south of Paisano continuing south along the S. P. to and including Spofford; thence running in a northerly direction just west of Eden, excluding Eden; thence northeast crossing the P. S. & F. east of Brownwood; thence continuing northwest, north of the P. S. & F. to Sweetwater Junction; thence in a northwesterly direction just east of Crosbyton, continuing north on an airline to a point immediately east of Silverton; thence northwesterly on an airline to a point east of Amarillo; thence curving around Amarillo, including Amarillo, and crossing the C. R. I. & G. west of Amarillo; thence running in a southwesterly direction north of the P. & S. F. and Santa Fe to the boundary of No. 126 at a point near Melrose; thence continuing on the southern boundary of No. 126 to the point of beginning.

Market Area No. 126—General description.—Points east of Belen Junction, New Mexico, to and including Melrose and including Estancia Valley.

Specific description.—Beginning at a point southeast of Belen Junction at the point of beginning of No. 129, not including Belen Junction; thence running in an easterly direction south of the A. T. & S. F. crossing the S. P. at Torrance, thus continuing in an easterly direction to and including Melrose, rounding Melrose, and returning in a westerly direction north of the A. T. & S. F., crossing the S. P. just north of Vaughn: thence running to a point northeast of Willard; thence running north (east of the A. T. & S. F.) to a point south of Kennedy, excluding Kennedy, returning in a southwesterly direction crossing the A. T. & S. F. line from Willard to Kennedy just south of Kennedy to the starting point of this area near Belen Junction.

Market Area No. 127—General description.—Belen Junction, New Mexico to Santa Fe, New Mexico, inclusive.

Specific description.—Beginning at a point immediately south of Belen Junction, (at the conjunction of Nos. 125,

126, and 129) running north on the to the northeast crossing Salt River; west boundary line of No. 126 to a point | thence on an airline running just south | just southeast of Kennedy; thence crossing the A. T. & S. F. just east of Lamy; thence northwest running east of Santa Fe to a point northeast of Santa Fe; thence southwest, including Santa Fe but excluding Rio Grande, crossing the Denver and Rio Grande midway between Santa Fe and Rio Grande, continuing in a southwesterly direction in a curved line so as to include points on the Santa Fe, crossing both lines of the Santa Fe just east of Dalies where it joins Market Area No. 129; thence following No. 129 to the point of beginning.

Market Area No. 128—General description .- Points east of Lamy.

Specific description.—Beginning at the tip of Market Area No. 127 just northeast of Santa Fe; thence running north (east of the D. & R. G. W.) to the New Mexico-Colorado state line; thence east on the Colorado-New Mexico state line to the New Mexico-Oklahoma state line; thence south on the Oklahoma-New Mexico state line to the Texas-New Mexico-Oklahoma state line; thence east on the Oklahoma-Texas state line to a point on the state line just east of Stratford: thence south on the east side of the P. & S. F. to its convergence with Market Area No. 125 at Amarillo, not including Amarillo; thence following the boundary of No. 125 in a southwesterly direction to the boundary line of No. 126 near Melrose; thence following the northern boundary of No. 126 to the boundary of No. 127 just southeast of Kennedy; thence following the boundary line of No. 127 to the point of beginning.

Market Area No. 129-General description.-Points on the Santa Fe Railroad south of but not including Belen Junction, New Mexico, to El Paso, Texas, inclusive, and west thereof, except as described in Market Area No. 130.

Specific description.—Beginning at a point just southeast of Belen Junction east of the A. T. & S. F. and running south crossing the S. P. between Fort Bliss and El Paso, curving around and including El Paso; thence west on the New Mexico state line to the Arizona state line; thence west to the Colorado River; thence north following the Colorado River to a joint just south of Parker Cut-off; thence southeast on an airline to a point just south of Matthie and west of Griggs, but keeping south of the A. T. & S. F.; thence on an air line to a point southwest of Hassayampa but northwest of the S. P.; thence in a general easterly direction excluding points on the S. P. (W. Chandler, Florence, Winkelman, Christmas Sta.) but running north of the S. P. line from Yuma to Tucson via Maricopa; thence curving around Christmas Sta, crossing the Gila River just east of Christmas Sta.; thence in a northwesterly direction between Su-

of McNary to a point immediately south of Dalies and immediately west of Belen Junction; thence to the point of beginning.

Market Area No. 130-General description.—Santa Fe Lines, Dalies, New Mexico, to Needles, California, inclusive, including the Phoenix Branch and the Parker Cut-off.

Specific description.—That remaining innermost portion of Arizona and western New Mexico bounded on the north, east and south by Areas Nos. 126, 127, 129, and 131, and on the west by a line joining Areas Nos. 129 and 130, running north and south (west of the Colorado River) and including Needles, California.

Market Area No. 131-General description.-Points north of but not including Santa Fe, New Mexico.

Specific description.—Beginning at a point just northeast of Santa Fe on the boundary line of No. 128; thence following the boundary line of No. 128 north to the Colorado-New Mexico state line; thence west on the New Mexico-Colorado state line to a point just east of where the D. & R. G. W. crosses the Colorado-New Mexico state line just south of Antonito, Colorado, not including Antonito, where it joins Market Area No. 132: thence following the boundary line of Market Area No. 132 to the Colorado-Utah state line; thence following the Utah-Arizona state line to the Nevada-Arizona state line; thence south to the Colorado River; thence following the Colorado River to a point north of Needles, California at the vertex of the Colorado River and Nevada state line: thence in a northeasterly direction excluding all points on the Santa Fe to a point just north of Grand Canyon, Arizona; thence running in a gradual southeasterly direction excluding all points on the A. T. & S. F. to the boundary of No. 127 west of Isleta; thence following the western boundary of No. 127 to the point of beginning.

Market Area No. 132-General description.—Tennessee Pass and west.

Specific description.—To points in western Colorado and eastern Utah beginning at a point on the Colorado-Wyoming state line at the boundary line of Market Area No. 133 and running west on the Wyoming-Colorado state line to the Colorado-Utah state line; thence south on the Colorado-Utah state line to and including Watson, Rainbow Junction, Rainbow, and Dragon, Utah, to the Utah-Colorado state line; thence south to the junction of Colorado, New Mexico, Arizona and Utah; thence east to a point west of the Farmington branch line. dropping south including said branch line and returning to the state line; thence following the D. & R. G. W. (south of the D. & R. G. W.) to the vertex of Market Area No. 133 south of Antonito,

boundary of No. 133 to the point of beginning.

Market Area No. 133-General Description.-Colorado east of Tennessee Pass.

Specific description.—To points in Colorado not included in Market Areas 135 and 134 east of a line beginning at the Wyoming-Colorado state line just west of Slater, Colorado; thence on an air-line south to a point just southwest of Craig; thence east to a point just west of Steamboat Springs; thence south crossing the D. & R. G. W. just southwest of Orested; thence southeasterly running north of Watts; thence south crossing the D. & R. G. W. just south of Deen; thence running south just west of the D. & R. G. W., crossing the D. & R. G. W. between Poncha Junction and Salida, again crossing the D. & R. G. W. west of Mears Junction; thence south to and including Center, Colorado; thence west to and including Creede: thence southeast to the state line where it converges with the boundary of Market Area No. 131 on the Colorado-New Mexico state line immediately south of Antonito, including Antonito; thence east to the Colorado-Kansas state line; thence north on the Colorado-Kansas state line to the Colorado-Nebraska state line; thence west on the Colorado-Nebraska state line to the starting point of this area.

Market Area No. 134.-Pueblo.

Market Area No. 135.-Includes the following cities and towns in the State of Colorado and all intermediate points and all railroad sidings or stations serving said cities and towns:

City or town	County location
Denver	Denver.
Englewood	Arapahoe.
Littleton	. Do.
Aurora	
Derby	
Westminster	Do.
Morrison	Jefferson.
Golden	. Do.
Ralston	
Edgewater	
ArvadaBlackhawk	Gilpin.
Central City	Do.
Idaho Springs	Clear Creek
Dumont	
Lawson	
Empire	
Georgetown	
Silver Plume	Do.

Market Area No. 136.-Points south of the main line of the Union Pacific Railroad, west of Market Area No. 139 in

Market Area No. 137.-Kansas points on and north of the main line of the Union Pacific excluding Salina and points in Market Area No. 138.

Market Area No. 138 .- Salina, Kansas. Market Area No. 139.-Points on and east of a line from Marysville, Irving, Garrison, Manhattan, Salina (excluding perior and Miami; thence curving gently | Colorado; thence continuing on the | Salina), McPherson, Newton, Wichita,

State Line.

Market Area No. 140.-Nebraska points on and east of a line from the Missouri River at Running Water through, but not including Bloomfield, Randolph, to and including Norfolk, thence southeast to and including Scribner, Fremont, and thence through Linwood to Wahoo, Valparaiso, Lincoln, Crețe, DeWitt, Beatrice, and Wymore to the Kansas state line, excluding Lincoln and Omaha.

Market Area No. 141.-Lincoln, Nebraska; switching limits of Lincoln.

Market Area No. 142.-Western Nebraska C. & N. W. Wyoming line to, but not including Eli, Nebraska; C. B. & Q. Wyoming line to, but not including Grand Island, Nebraska.

Market Area No. 143.-Remainder of Nebraska.

Market Area No. 144.-That part of South Dakota west of and including Rapid City and known as the Black Hills District and south of Market Area No. 147.

Market Area No. 145.—That portion of South Dakota east of Rapid City to and west of the Missouri River not included in Market Areas Nos. 144 and 147.

Market Area No. 146.—That portion of South Dakota east of the Missouri River not included in Market Area No. 147.

Market Area No. 147.-All of North Dakota and that part of South Dakota north of a line drawn east and west one mile south of Watertown.

Market Area No. 148.—All points in the state of Montana except that portion described in Market Area No. 149.

Market Area No. 149.-All points on the main line of the C. B. & Q. Railroad from the Wyoming-Montana state line to and including Billings via Toluca, Montana.

Market Area No. 150 .- State of Wyoming.

Market Area No. 151.-To points in Utah south of a line running east and west through Ogden except that portion in Utah described in Market Area No. 132.

Market Area No. 152.—General Description: States of Nevada, California, and to points in extreme southeastern Idaho.

Specific description.-Beginning at a point on the northern boundary of No. 151 near Wahsatch, Utah, continuing westward on this boundary to the Nevada-Utah state line; thence south following the state lines of California and Nevada, following the western boundary of Nos. 130, 131, where possible, thus excluding Needles, returning northward via the Pacific Coast to the northwest corner of California; thence east on the state lines of California, Oregon, Nevada, and Idaho to a point just west of the "Ogden-Malad Line" of the O. S. L.; thence due north, excluding Malad, to a point just southwest of McCammon, Wyoming state line, excluding McCam-

and South Haven, Kansas to the Kansas | mon and Grace; thence south on the beginning.

Market Area No. 153 .- Oregon, Washington, and Idaho, except that area described in Market Areas Nos. 152, 154, 155, and 156.

Market Area No. 154.—City of Spokane, Washington, and adjacent points where freight rates on coal from Producing Areas on the Canadian Pacific and Spokane & International R. R. are as low or lower than the rates on the Northern Pacific R. R. from Roslyn and Bayne rate groups.

Market Area No. 155.-Points in Washington on the Great Northern R. R. east of the Cascade Tunnel to Wenatchee and north thereof.

Market Area No. 156 .- City of Seattle, Washington.

MINIMUM PRICE AREA NO. 6-DISTRICT No. 18

PROPOSED MINIMUM PRICES

In compliance with order No. 245 of the Commission the District Board for District No. 18 at a meeting commencing on August 5, 1938, at which more than 96% of the tonnage of bituminous coal produced in that District during the year 1937 was represented, a tentative schedule of proposed minimum prices free on board transportation facilities at the mines for kinds, qualities and sizes of coal produced within the District, classification of coals, price variations as to mines, consuming market areas, values as to uses and seasonal demand was prepared. A copy of said schedule was transmitted to each and every code member of record August 12. 1938. At the time the schedule was transmitted each code member was advised by letter that a hearing would be held by the District Board August 19, 1938, for the purpose of permitting each code member to advise the District Board of any protest or objection such code member might have with regard to the tentative schedule of such proposed minimum prices.

The District Board conducted a hearing as noticed and as a result of the protests and further discussions relative to the prices which had been proposed in the tentative schedule a final schedule of proposed minimum prices was adopted and the required number of copies of such schedule were forwarded to the Commission and to each of the code members within the District. That schedule is the one on which testimony and evidence was taken before the full Commission at the hearing conducted in Denver, Colorado, and appears in the record as Exhibit No. 165. The District Board was represented at the hearing by the Secretary of the Board, a man thoroughly familiar with the problems of Idaho; thence due east to the Idaho- marketing and distributing of coals produced in District No. 18.

The schedule of proposed minimum Wyoming state line to the point of prices, Exhibit No. 165, contains sixteen size groups which were determined in the following manner: the District Board through its Secretary requested all the coal operators in the District to advise the District Board of the total tonnage of each size of coal which they shipped during the year 1937. In compliance with that request more than 96% of the tonnage which the operators in the district distributed during that year was reported to the District Board. Upon receipt of that information the District Board determined from that data the various sizes of coal which was produced within District No. 18 that could be grouped together for price purposes, that is on which sizes the same price should apply for each mine in each producing subdistrict. Each size group specifies the maximum top and maximum bottom size of the sizes of coals which fell into each size group.

> The District Board divided the producing District into eight subdistricts, namely, Gallup, Cerrillos, La Ventana, Rio Arriba, White Oaks, Carthage, Hagan, and San Juan. It was testified by the Secretary of the Board that the producing District had been so subdivided for many years and that the coals in each of those sub-districts are known generally by the name of the sub-district in which such coals are produced.

The Gallup and Cerillos sub-districts are the largest producing sub-districts. Approximately 93% of the total production of District No. 18 is produced in those sub-districts, 83% of the production of the District being from the Gallup subdistrict.

The District Board designated the market areas into which the producers of District No. 18 shipped their coals on page 10 of the schedule, Exhibit No. 165. The market areas are designated by States, namely, New Mexico, Arizona, California, Texas and Colorado. Those market areas were more specifically identified by the District Board by numbers which were the same as those formerly given to such areas by the Commission, to wit, 125, 126, 127, 128, 129, 130, 131, 132, 133 and 152. A specific description of each numbered area appears in the record as Exhibit No. 186.

The District Board classified the coals of the code members within the District. The coals produced at the mines in subdistrict 1, namely, the Gallup sub-district, were determined to be comparable in quality, marketability, consumer acceptance and physical characteristics and such coals were therefore classified alike in all size groups. The coals produced in all of the other subdistricts were similarly classified. The "A" classification represents the highest price coal in each size group. The "B" and "C" classifications represent prices of coal which are values less than the "A" coals in descending orders of value. The same order of | type coals. Such coals have different | No. 5 (White Oaks) are bituminous in price values applies also to "D" and "E" classifications. The coals which were grouped together in a single size group by the District Board were designated by size group numbers 1 to 15 inclusive and are more specifically described on page 5 of the schedule, Exhibit No. 165. Size group number 16 was used as a designation for all sizes between 8" top and ½" bottom which the code members of the District sold for railroad locomotive fuel use. The coals in each of the size groups 1 to 15 inclusive were likewise arranged in their descending orders of value. The coals classified as "A" in size group number 1 were taken as the base or starting point for the proper pricing of other coals produced in the District in point of value.

Due to the varying conditions in the market areas of sub-districts 1 (Gallup) and 2 (Cerrillos) variations in differentials between certain sizes prepared by sub-districts 1 and 2, namely, size groups 1 and 4, do not remain constant into all markets, that is, in District No. 18, price variations between coals shipped from the Gallup and Cerrillos districts will change according to consumer acceptance in various markets. These price variations as to market areas appear in the record as Exhibit No. 166. The price differentials appearing on page 9 of Exhibit No. 165 existing between the size groups in the sub-districts, with the exception of those existing between the Gallup and Cerrillos sub-districts, remain constant and uniform into all market areas. As shown in Exhibit No. 166. the differential for size group 1 between sub-district No. 1 and sub-district No. 2 in market areas 125, 126 and 129, is 25 cents; in market areas 127, 128 and 131, the differential is 65 cents; in market area 130, the differential is 25 cents; in market area 152, the differential is 50 cents; and for size group 4, the differential between sub-district 1 and sub-district 2 is 60 cents in market areas 125 and 126; in market areas 127, 128 and 131, the differential is 10 cents; and in market areas 129 and 130, the differential is 20 cents.

Exhibit No. 166 shows a differential of 25 cents between the coals of subdistrict 1 (Gallup) and sub-district 2 (Cerrillos) in size group 1 when such coals move into market areas 125, 126 and 129, the sub-district 2 coal having such differential over sub-district 1 coal: whereas, when these same coals move into market areas 127, 128 and 131, the sub-district 1 coal has a differential of 65 cents over sub-district 2 coal. Neither transportation charges nor costs due to the difference in transportation methods were taken into consideration in proposing any of such differentials. The reason for the variance in the differentials between the coals in size groups 1 and 4 of sub-district 1 and subdistrict 2 is that the coals of sub-district 1 and sub-district 2 are not identical poses. The coals produced in sub-district on the price schedule as submitted to

uses and are not competitive in certain areas due to butside factors, such as competition with other fuels. Thus, the differential relationship between such coals into the different markets is not constant. The proposed differentials have existed over a long period of years due to the specialized conditions encountered in the various market areas into which such coals have been shipped. Consumer demand and customer acceptance indicates, and has indicated, that such differentials are fair and equitable as between producers and give due regard to the interests of the consuming public. It was the judgment of the District Board for District No. 18 that the price differentials shown on page 9 of Exhibit No. 165 and supplemented by Exhibit No. 166 are just and equitable as between the producers in District No. 18 for the reason that, if differentials other than those shown in Exhibit No. 165 as supplemented by Exhibit No. 166 were different, same would not only be unjust and inequitable as between producers within the District but would disturb the normal flow of coal. It was also the judgment of the District Board for District No. 18 that the differentials shown on Exhibit No. 165, as supplemented by Exhibit No. 166, have due regard to the interests of the consuming public. This for the reason that consumers' demand and acceptance have set such differentials between various coals in each of the market areas in District No. 18.

The coals produced in sub-district No. 2 (Cerrillos) in District No. 18 are semicoking bituminous coals, excellent for furnace use. The coals in sub-district No. 1 (Gallup) in District No. 18 are free burning sub-bituminous coals excellent for domestic purposes. The coals produced in the Gallup sub-district are similar, the characteristics being subbituminous, non-coking, free burning, and are used for domestic and commercial business. The coals produced in the Cerrillos sub-district are of a bituminous, semi-coking character, are friable and are used for commercial and industrial business. The general distinction between the coals produced in the Gallup and Cerrillos sub-districts is that the coal produced in the Gallup sub-district is a sub-bituminous friable, free burning, high moisture, long flame coal while that produced in the Cerrillos sub-district is a semi-coking coal, of low moisture content and less friable. There is a difference in the structure of said coals and in their appearance. The coals produced in sub-district No. 3 (La Ventana) in District No. 18 are sub-bituminous in nature, free burning, friable, and extremely high in moisture content. The coals produced in sub-district No. 4 (Rio Arriba) are bituminous in nature. Such coals are soft in nature and are excellent for coking, steam and domestic pur-

nature, free burning and excellent for steam raising purposes. Such coals are also used for domestic purposes. The coals produced in sub-district No. 6 (Carthage) are bituminous in nature and are excellent coals for coking and smithing purposes. The coals produced in subdistrict No. 7 (Hagan) are free burning and similar to the coals produced in the Gallup sub-district. Such coals are hard in nature and of a very high grade and comparable with the coals produced in the Cerrillos sub-district. Such coals are for the most part used domestically. The coals produced in sub-district No. 8 (San Juan) are hard in structure, blocky, chunky and dull in appearance. They are high ash coals even to the extent of being flinty at times. Such coals are used for the most part domestically and are not comparable to any of the coals produced in the other sub-districts.

The differentials for the coals produced in District No. 18, as reflected in the schedule of proposed minimum prices submitted to the Commission by the District Board for District No. 18. are necessary. Such differentials could not be uniform for the reason that, if same were uniform, existing fair competitive relationships would be disturbed.

· As shown in Exhibits Nos. 165 and 166, the prices as proposed would yield a return of \$3.00 per net ton as an average for the production of District No. 18. Exhibits Nos. 165 and 166 were based upon tonnages for the year 1937 furnished the District Board for District No. 18 by the code members in District No. 18. Such tonnages were broken down into sizes and then applied to the prices proposed for each size. In making this computation, over 96% of the tonnage produced in District No. 18 for the year 1937 was used. Exhibit No. 169 shows a detailed breakdown of the 1937 distribution into size groups and shows the respective weighted average realization per ton for the district at the prices proposed. Exhibit No. 169 shows the 1937 production of code members in District No. 18 broken down into size groups showing the respective realization and the weighted average realization per ton for the district at prices proposed by the District Board for District No. 18 and submitted to the Commission. The weighted average cost of Minimum Price Area No. 6, the Minimum Price Area in which District No. 18 is located, as determined by the Commission is \$2.758. There is, therefore, a difference of approximately 25 cents between the yield upon the tonnage under the prices as proposed by the District Board for District No. 18 and the weighted average cost of production for Minimum Price Area 6, as determined by the Commission. If an identical amount were deducted from each figure

the Commission by the District Board for District No. 18, such deduction would not disturb the price relationships as proposed by the District Board.

The District Board for District No. 18 is composed of producers experienced in the production and sale of coals in District No. 18 for many years. Said District Board is composed of nine members, six of whom participated in the preparation and adoption of the final minimum price schedule submitted to the Commission. In addition to the District Board members who participated in the preparation of said schedule, there were other producers who, together with the members of the District Board, represented more than 96% of the total tonnage produced in District No. 18. The District Board for District No. 18 approved the schedule of proposed minimum prices before submitting same to the Commission and, in the judgment of said Board, the prices proposed to the Commission under its Order No. 245 are just and equitable between the producers within the district, have due regard to the interests of the consuming public and do not, and will not, permit dumping. It was also the judgment of said Board that the prices as proposed to the Commission under its Order No. 245 reflect, as nearly as possible, the relative market values of the various kinds, qualities and sizes of coal produced in District No. 18; reflect price variations as to values and as to uses; reflect price variations as to consuming market areas of the various kinds, sizes and qualities of coals produced within the district; and conform to the requirements of Order No. 245 of the Commission.

The District Board for District No. 17 protested the schedule of minimum prices submitted to the Commission by the District Board for District No. 18. The protest involved relationships between sizes of coal inter-district. No relationships between sizes of coal intradistrict were involved. The protest, therefore, is improperly before the Commission at this time as same involves issues to be considered in the coordination of prices under Section 4-II (b) of the Act. The Commission so rules and such ruling, for the present, sufficiently disposes of said protest.

The testimony of the witness for the District Board relative to the price proposed in size group No. 16 for coals sold to railroads for locomotive fuel use was to the effect that said price reflected the relative value of the various kinds, qualities and sizes of coals included in that size group when such coals were sold for such use. There was no testimony or evidence to the contrary. Hence the Commission finds that the price so proposed reflects a proper differential for coals sold included in that size group as compared with the coals included in the posed in the schedule, Exhibit No. 165.

And now, upon the record in this cause. upon the evidence, both documentary and otherwise, and upon the above and foregoing facts found to exist, the Commission finds:

That the schedule of proposed minimum prices as submitted to the Commission by the District Board for District No. 18 should be and same is hereby further modified as hereinafter set forth in order that same may better conform to Order No. 245 of the Commission and to the provisions of Section 4-II (a) of the Act:

Item 1 on page 3 of the schedule which reads "Prices listed herein are per net ton of 2,000 pounds f. o. b. transportation facilities at the mines," shall be revised to read, "The prices listed herein are in cents per net ton of 2,000 pounds f. o. b. transportation facilities at the mines."

Item 3 on page 3 of the schedule which reads, "All size designations herein are for round hole screens. When other types of screens are used the round hole equivalent shall control the size" shall be revised to read, "All size designations herein are for round hole screens, or their equivalent, except when otherwise designated. When other types of screens are used, the District Board shall determine the actual size designation of the coal so prepared, with the approval of the Coal Commission.'

Item 6 on page 3 of the schedule which reads, "When any size of coal is sold, in which the maximum top or bottom size exceeds the sizes scheduled, then such coal must be included in the higher size group and priced accordingly" shall be revised to read, "When any size of coal is sold, in which the maximum top or bottom size exceeds the sizes scheduled, then such coal must be included in the next higher priced size group and priced accordingly."

Page 4 of the schedule shall be deleted entirely as same is duplicated on page 5 of the schedule.

The notes at the bottom of page 5 of the schedule shall be stricken since the subject matter is covered by the above and foregoing revisions relative to the price instructions on page 3 of the schedule.

Page 5 of the schedule shall be revised as to Size Groups 1, 2, 5, 6, 7, 8, 14 and 16. Size Group 1 is corrected so as to read, "All lump 4 inch round or larger, or 2½-inch bar or larger." Size Group 2 is corrected so as to read "2 inch lump." Size Group 6 is corrected by omitting the word "round" following "21/2 inches" under maximum bottom size. Size Group 7 is corrected by adding the word "square" following "11/2 inches" under maximum bottom size. Size Group 8 is corrected by deleting the word "round" following "11/4 inch" under maximum bottom size. other size groups in terms of prices pro- Size Group 14 is corrected to read suming public; and do not permit "screened mine run" under the heading dumping.

"maximum top size." Size Group 16 is corrected to read. "All engine coal for railroad and locomotive use-all sizes between 8 inch maximum top size and ½ inch minimum bottom size." The order of Size Groups 5 and 6 is reversed, making Size Group 5 read Size Group 6 and vice versa and pages 7, 8, and 9 of the schedule are corrected to reflect such changes.

Page 6 of the schedule is amended by the addition of "County" identification. as follows:

Subdistrict and Identification

- 1. Gallup-McKinley County. New Mexico, and Navajo County, Arizona.
- 2. Cerrilles-Santa Fe County, New Mexico.
- 3. LaVentana-West of Rio Grande River in Sandoval County, New Mexico.
- 4. Rio Arriba-Rio Arriba County, New Mexico.
- 5. White Oaks-Lincoln County, New Mexico.
- 6. Carthage Socorro County, New Mexico.
- 7. Hagan-East of Rio Grande River in Sandoval County, New Mexico.
- 8. San Juan—San Juan County, New Mexico.

Page 7 of the schedule is corrected by striking therefrom the names of Mutual Coal, Light & Power Company (Mutual Mine) and Steve Poklar (White Ash Mine) as such code members are no longer producers.

The schedule of minimum prices as proposed by the District Board for District No. 18 is amended so as to incorporate therein Exhibit No. 166 showing the varying differentials by market areas; Exhibit No. 186 defining the geographical boundaries of the market areas.

That the District Board for District No. 18, as directed in Order No. 245 of the Commission, proposed minimum prices free on board transportation facilities at the mines for kinds, qualities and sizes of coal produced within the district, classification of coal and price variations as to mines, consuming market areas, values as to uses and seasonal demand.

That the District Board for District No. 18, as directed in Order No. 245 of the Commission, submitted to the Commission a schedule of such proposed minimum prices, together with the data upon which same were computed, including, but without limitation, the factors considered in determining the price relationship.

That the minimum prices proposed by the District Board for District No. 18 reflect, as nearly as possible, the relative market value of the various kinds, qualities, and sizes of coal produced within the district; are just and equitable as between producers within the district; have due regard to the interests of the conThat the minimum prices for any kind, quality or size of coal for shipment into any consuming market area, as proposed by the District Board for District No. 18, are just and equitable as between producers within the district.

That the minimum prices, as proposed by the District Board for District No. 18, are not proposed in such manner as to yield a return per net ton for the district equal as nearly as may be to the weighted average of the total costs. per net ton, of the tonnage of Minimum Price Area No. 6, the Minimum Price Area in which District No. 18 is placed under the Act. The return, or net realization, per net ton for District No. 18, under the minimum prices as proposed for said district, is \$3.00; whereas, the weighted average of the total costs, per net ton, of the tonnage of Minimum Price Area No. 6, as heretofore determined by the Commission, is \$2.758. The difference resulting between cost and realization, therefore, is approximately twenty five cents (25¢). With such difference of 25 cents existing between cost and realization under the prices as proposed, the realization under such proposed prices is not equal "as nearly as may be" to the area cost of Minimum Price Area No. 6. By reducing each of the minimum prices, as proposed for said district, 25 cents, such prices will then yield a return per net ton for the district equal as nearly as may be to the weighted average of the total costs, per net ton, of the tonnage of the price area in which District No. 18 is located. Such reduction is proper and the schedule of proposed minimum prices submitted to the Commission by the District Board for District No. 18 should be modified, and the same is hereby modified, to such extent.

That the schedule of proposed minimum prices submitted to the Commission by the District Board for District No. 18 as amended, corrected, modified, and revised, as hereinabove set forth, conforms to Order No. 245 of the Commission and to the requirements of Section 4-II (a) of the Act and as so amended, corrected, modified, and revised, said schedule should be and the same is hereby approved by the Commission, to serve as the basis for the coordination provided for in Section 4-II (b) of the Act. A copy of said schedule as amended, corrected, revised, and modifield appears in the Appendix for District No. 18.

APPENDIX FOR DISTRICT NO. 18

Schedule of Minimum Prices, as Modifled and Approved, to Serve as a Basis for Coordination

Note.—The prices in this schedule are not the final prices that will be established on coal for shipment by Code Members within this district into consuming markets of this district. In the ultimate establishment of the effective minimum prices, pursuant to subsection (b) of Part II, Section 4 of the Act, the minimum prices in this schedule are subject to such increase or decrease respectively, as may be necessary to carry out the provisions of subsections (a) and (b) of Part II, Section 4 of the Act.

F. W. McCullough, Secretary.

Issued: December 9, 1938.

TABLE OF CONTENTS

Price Instructions and Exceptions, Size Groups. Identification of Sub-District Numbers. Alphabetical List of Code Members. Price Classifications by Sub-Districts. Prices. Market Area Description.

PRICE INSTRUCTIONS AND EXCEPTIONS

Item No. 1.—Prices listed herein are in cents per net ton of 2,000 lbs. f. o. b. transportation facilities at the mine.

Item No. 2.—All prices are subject to the Marketing Rules and Regulations issued by the National Bituminous Coal Commission.

Item No. 3.—All size designations herein are for round hole screens, or their equivalent, except when otherwise designated. When other types of screens are used, the District Board shall determine the actual size designation of the coal so prepared, with the approval of the Coal Commission.

Item No. 4.—When coal is subjected to any chemical, oil or waxing process, an additional charge of not less than 25 cents per net ton shall be made.

Item No. 5.—In the sale of coal to destined points outside the boundary of the United States, the prices stipulated herein are for payment in United States funds.

Item No. 6.—When any size of coal is sold, in which the maximum top or bottom size exceeds the sizes scheduled, then such coal must be included in the Mexico.

next higher priced size group and priced accordingly.

Size Groups

Size group No.	Maximum top size	Maximum bottom size
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	8" 8" 2½" Bar	All lump 4" round of larger or 21/2" bar of larger. 2" Lump. 3". 11/4". 11/4" Square. 11/4". 3"". 0". 0". 0". 3". "".

IDENTIFICATION OF SUB-DISTRICT NUMBERS

Sub-District Number and Identification

- 1. Gallup.—McKinley County, New Mexico, and Navajo County, Arizona.
- 2. Cerrillos.—Santa Fe County, New Mexico.
- 3. La Ventana.—West of Rio Grande River in Sandoval County, New Mexico.
- 4. Rio Arriba.—Rio Arriba County, New Mexico. 5. White Oaks.—Lincoln County, New
- Mexico.
 6. Carthage.—Socorro County. New
- Mexico.
 7. Hagan.—East of Rio Grande River
- in Sandoval County, New Mexico. 8. San Juan.—San Juan County, New

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Separately Shown

	,	Sub-	Seam or	F	ric	*	las	sif	ìca	tio	ns	an	đ s	ilze	gr	ou	p l	No	 s.
Code member	Mine name	dist. No.	kind	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Albuquerque & Cerrillos Coal Co. Aztec Coal Company Benigar, George. Biava Coal Company Black Star Coal Co. Boardman Coal Co. Caranta, Barney Chiaramonte Coal Co. Defiance Coal Company El Cerro Coal Mining Co. Erler, Andy & Sons. Foutz, J. J. Gallup American Coal Co. Gallup Southwestern Coal Co. George Coal Company Climore, J. E.	Biava. Black Star Boardman Caranta Chiaramonte Mentmore Ella Erler Caudell No. 5 Atherton George Kinney No. 2	14 11 14 11 64 81 11 16	Cook & White. Subbit. Bit. Subbit. Go. Bit. Go. Bit. Go. Bubbit. Go. Bit. Bit.	ABAABAA B	B BCBBBCBBACEBB	A	A A A A A A A A A A A A A A A A A A A	A	A A A A A A A A A A A A A A A A A A A	A	B B BBB BBA BBB	A	Ā	A ABAAABAA BCAA	B B BBBB BBA ; BB	A	A	B BDBBBDB	
Giraudo, Mike. Golden Smelting & Rafining Co. Grenko Coal Company Hart, John. Hayes, B. W. Hirsch, O. B. Higham & Chark. Hog Back Coal Company James, John. Juliana Coal Company Kempton, L. D. Kinney, B. H. Kutz, Dan. Morgan, George. Morris, L. E.	Tejon. Golden. Grenko. Hart. Hayes. Hagan. Hone. Hog Back James. Juliana.		dodododododododo.	A A B	BABADBBBDBEACEB				A A A		ABA: BB:B:A:B	Ā Ā B	A BA B	A A AC BCA	ABABA IBBB IB IA I B	Ā		A ABAC BBCBEADEB	 A A

Alphabetical List of Code Members Showing Price Classification by Sizes for All | Mexico, to and including Melrose and Uses Except as Separately Shown—Continued

	Mineman	Sub-	Seam or	P	ric	e c	las	sifi	cat	io	ns	an	d s	ize	gr	ou	p l	Tos	
Code member	Mine name	No.	kind	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Navajo Mercantile Co	Garcia	. 4 5 4 1 3 8	Bitdo Subbit do do	B A 	CACBDEE		 Ā		Ā		А В 	B	A B	B A C C	В			D A D B C E E	

Classification by Sizes for Each Sub-District

Design	Sub-				Pri	ice cl	assifi	catio	n an	d siz	e gro	up n	umb	ers			_
Producers	dist. No.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
All Producers In Sub-Dist. 1 All Producers In Sub-Dist. 2 All Producers In Sub-Dist. 3 All Producers In Sub-Dist. 4 All Producers In Sub-Dist. 4 All Producers In Sub-Dist. 5 All Producers In Sub-Dist. 6 All Producers In Sub-Dist. 7 All Producers In Sub-Dist. 8	1 2 3 4 5 6 7 8	A C B	BBDC AABE	A	A A	A	A	A	В В А А	A A B	A A B	А В 	B B A A B	A	A	B B C D A A E	A

Prices for Shipment Into All Market Areas

Price classification]	Price	sino	ents	per	net t	on of	2,000) pot	ınds	and	size g	group	nur	nber	8
Price classification	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
A	437 425			372	335	325	300	425 275	190 125	275 75		175 145		300	375 300 240	325
C D E	418	375 350 225													225 175	

See "Price instructions and exceptions."

PRICE VARIATIONS AS TO MARKET AREAS Size Group 1

Market Areas 125, 126, 129.-Subdistrict 1, 4.25 (A); Sub-district 2, 4.50 (C).

Market Areas 127, 128, 131.—Subdistrict 1, 4.25 (A); Sub-district 2, 3.60 (C).

Market Area 130.—Sub-district 1, 4.75 (A); Subdistrict 2, 4.50 (C).

Market Area 152.-Sub-district 1, 4.00 (A); Sub-district 2, 3.50 (C).

Size Group 4

Market Areas 125, 126.-Sub-district 1, 3.35 (A); Sub-district 2, 3.95 (A).

Market Areas 127, 128, 131.—Subdistrict 1, 3.35 (A); Sub-district 2, 3.45 (A).

Market Areas 129, 130.—Sub-district 1, 3.75 (A); Sub-district 2, 3.95 (A).

See "Price instructions and exceptions."

GEOGRAPHICAL DESCRIPTION OF CONSUMING MARKET AREAS TO WHICH PRICES APPLY

The prices apply to the following geographical market areas: To the States of New Mexico; Arizona; California; Texas and Colorado.

Market Area No. 125-General description.-Clovis, New Mexico, to Amarillo, Brownwood, Spofford and west to El Paso, including the Pecos Valley Lines; Clovis, I tion.—Points east of Belen Junction, New | scribed in Market Area No. 130.

New Mexico, to Pecos, Texas, and Southern Pacific Lines, Torrance to El Paso.

Specific description.—Following the eastern boundary of Market Area No. 129 from a point just southeast of Belen Junction at the convergence of Market Areas Nos. 126 and 129 to El Paso, crossing the S. P. between El Paso and Fort Bliss, and crossing the S. P. just west of Alfalfa; thence running in a southeasterly direction south of the T. & N. O. (S. P.) crossing the P. & S. F. just south of Paisano continuing south along the S. P. to and including Spofford; thence running in a northerly direction just west of Eden, excluding Eden; thence northeast crossing the P. S. & F. east of Brownwood; thence continuing northwest, north of the P. S. & F. to Sweetwater Junction; thence in a northwesterly direction just east of Crosbyton continuing north on an airline to a point immediately east of Silverton; thence northwesterly on an airline to a point east of Amarillo; thence curving around Amarillo; including Amarillo, and crossing the C. R. I. & G. west of Amarillo; thence running in a southwesterly direction north of the P. & S. F. and Santa Fe to the boundary of No. 126 at a point near Melrose; thence continuing on the southern boundary of No. 126 to the point of beginning.

Market Area No. 126-General descrip-

including Estancia Valley.

Specific description.—Beginning at a point southeast of Belen Junction at the point of beginning of No. 129, not including Belen Junction; thence running in an easterly direction south of the A. T. & S. F. crossing the S. P. at Torrence, thus continuing in an easterly direction to and including Melrose, rounding Melrose, and returning in a westerly direction north of the A. T. & S. F., crossing the S. P. just north of Vaughn; thence running to a point northeast of Willard; thence running north (east of the A. T. & S. F.) to a point south of Kennedy, excluding Kennedy, returning in a southwesterly direction crossing the A. T. & S. F. line from Willard to Kennedy just south of * Kennedy to the starting point of this area near Belen Junction.

Market Area No. 127-General description.-Belen Junction, New Mexico, to Santa Fe, New Mexico, inclusive.

Specific description.—Beginning at a point immediately south of Belen Junction (at the conjunction of Nos. 125, 126 and 129), running north on the west boundary of No. 126 to a point just southeast of Kennedy; thence crossing the A. T. & S. F. just east of Lamy; thence northwest running east of Santa Fe to a point northeast of Santa Fe; thence southwest, including Santa Fe but excluding Rio Grande, crossing the Denver and Rio Grande midway between Santa Fe and Rio Grande, continuing in a southwesterly direction in a curved line so as to include points on the Santa Fe, crossing both lines of the Santa Fe just east of Dalies where it joins Market Area No. 129; thence following No. 129 to the point of the beginning.

Market Area No. 128-General description.—Points east of Lamy.

Specific description.—Beginning at the tip of Market Area No. 127 just northeast of Santa Fe: thence running north (east of the D. & R. G. W.) to the New Mexico-Colorado state line; thence east on the Colorado-New Mexico state line to the New Mexico-Oklahoma state line: thence south on the Oklahoma-New Mexico state line to the Texas-New Mexico-Oklahoma state line; thence east on the Oklahoma-Texas state line to a point on the state line just east of Stratford; thence south on the east side of the P. & S. F. to its convergence with Market Area No. 125 at Amarillo, not including Amarillo; thence following the boundary of No. 125 in a southwesterly direction to the boundary line of No. 126 near Melrose; thence following the northern boundary of No. 126 to the boundary line of No. 127 just southeast of Kennedy: thence following the boundary line of No. 127 to the point of beginning.

Market Area No. 129-General description.—Points on the Santa Fe Railroad south of but not including Belen Junction, New Mexico, to El Paso, Texas, inclusive, and west thereof, except as de-

Specific description.—Beginning at a point just southeast of Belen Junction east of the A. T. & S. F. and running south crossing the S. P. between Fort Bliss and El Paso, curving around and including El Paso; thence west on the New Mexico state line to the Arizona state line; thence west to the Colorado River; thence north following the Colorado River to a point just south of Matthie and west of Griggs, but keeping south of the A. T. & S. F.: thence on an airline to a point southwest of Hassayampa but northwest of the S. P.: thence in a general easterly direction excluding points on the S. P. (W. Chandler, Florence, Winkelman, Christmas Sta.) but running north of the S. P. line from Yuma to Tucson via Maricopa; thence curving around Christmas Sta. crossing the Gila River just east of Christmas Sta.; thence in a northwesterly direction between Superior and Miama; thence curving gently to the northeast crossing Salt River; thence on an airline running just south of McNary to a point immediately south of Dalies and immediately west of Belen Junction; thence to the point of beginning.

Market Area No. 130—General description.—Sante Fe lines, Dalies, New Mexico, to Needles, California, inclusive, including the Phoenix Branch and the Parker Cut-off.

Specific description.—That remaining innermost portion of Arizona and western New Mexico bounded on the north, east and south by Areas Nos. 126, 127, 129, and 131, and on the west by a line joining Areas Nos. 129 and 130, running north and south (west of the Colorado River) and including Needles, California.

Market Area No. 131-General description.—Points north but not including Sante Fe, New Mexico.

Specific description.—Beginning at a point just northeast of Santa Fe on the boundary line of No. 128; thence following the boundary line of No. 128 north of the Colorado-New Mexico state line; thence west on the New Mexico-Colorado state line to a point just east of where the D. & R. G. W. crosses the Colorado-New Mexico state line just south of Antonito, Colorado, but including Antonito, where it joins Market Area No. 132; thence following the boundary line of Market Area No. 132 to the Colorado-Utah state line; thence following the Utah-Arizona state line to the Nevada-Arizona state line; thence south to the Colorado River; thence following the Colorado River to a point north of Needles, California, at the vertex of the Colorado River and Nevada state line; thence in a northeasterly direction excluding all points on the Sante Fe to a point just north of Grand Canyon, Arizona; thence running in a gradual southeasterly direction excluding all points on the A. T. & S. F. to the boundary of No. 127 west of Isleta; thence following the western boundary of No. 127 to the point of beginning.

Market Area No. 132-General description.—Tennessee Pass and west.

Specific description.—To points in west of McCammon, Idaho; thence due western Colorado and eastern Utah beginning at a point on the Colorado-Wyoming state line at the boundary line of Market Area No. 133 and running west on the Wyoming-Colorado state line to the Colorado-Utah state line; thence south on the Colorado-Utah state line to and including Watson, Rainbow Junction, Rainbow, and Dragon, Utah, to the Utah-Colorado state line; thence south to the junction of Colorado, New Mexico, Arizona, and Utah; thence east to a point west of the Farmington branch line, dropping south including said branch line and returning to the state line; thence following the D. & R. G. W. (south of the D. & R. G. W.) to the vertex of Market Area No. 133 south of Antonito, Colorado; thence continuing on the boundary of No. 133 to the point of beginning.

Market Area No. 133-General description.—Colorado east of Tennessee

Specific description.-To points in Colorado not included in Market Areas 135 and 134 east of a line beginning at the Wyoming-Colorado state line just west of Slater, Colorado; thence on an air-line south to a point just southwest of Craig; thence east to a point just west of Steamboat Springs; thence south crossing the D. & R. G. W. just southwest of Orestod; thence southeasterly running north of Watts; thence south crossing the D. & R. G. W. just south of Deen; thence running south just west of the D. & R. G. W., crossing the D. & R. G. W. between Poncha Junction and Salida, again crossing the D. & R. G. W. west of Mears Junction; thence south to and including Center, Colorado: thence west to and including Creede; thence southeast to the state line where it converges with the boundary of Market Area No. 131 on the Colorado-New Mexico state line immediately south of Antonito, including Antonito; thence east to the Colorado-Kansas state line: thence north on the Colorado-Kansas state line to the Colorado-Nebraska state line; thence west on the Colorado-Nebraska state line to the starting point of this area.

Market Area No. 152-General description.—States of Nevada, California, and to points in extreme southeastern Idaho.

Specific description.—Beginning at a point on the northern boundary of No. 151 near Wahsatch, Utah, continuing westward on this boundary to the Nevada-Utah state line; thence south following the state lines of California and Nevada, following the western boundary of Nos. 130, 131, where possible, thus excluding Needles, returning northward via the Pacific Coast to the northwest corner of California: thence east on the state lines of California, Oregon, Nevada and Idaho to a point just west of the "Ogden-Malad Line" of the O. S. L.; thence due north, ex-

east to the Idaho-Wyoming state line, excluding McCammon and Grace; thence south on the Wyoming state line to the point of beginning.

MINIMUM PRICE AREA NO. 7-DISTRICT No. 19

PROPOSED MINIMUM PRICES

District Board No. 19 prepared a schedule of proposed minimum prices which was in its best judgment a compliance with the Commission's Order No. 245. It then transmitted a copy of these proposed prices to each Code Member within the District. No protests being received to these proposed prices, the District Board thereafter filed a copy of same, together with the data upon which it was computed, with the Commission, which schedule of proposed minimum prices was received in evidence as Exhibit No. 175.

Testimony in support of the minimum prices proposed by District Board No. 19 was adduced by an expert witness, to wit. the Chairman of the District Board, who was thoroughly familiar with the marketing and distribution of coals in District No. 19. His knowledge of the coals in said District was based upon years of experience in the District. It appears that the District Board consists of nine members, all of whom are thoroughly familiar with producing and marketing coal in said District. They have each had many years of experience and are thoroughly representative of all the Code Members within the District, and are men who, by reason of their intimate knowledge of their own coals and their familiarity with their competitor's coals. are fully capable of judging the price differentials and relationships between the kinds, qualities, and sizes of coal produced within the District.

The expert witness and the other members of the District Board prepared the schedule of proposed prices. The evidence shows that, while there were no protests received to this schedule of proposed prices, there was an objection to the method used by the Board in increasing the basic proposed prices by 8.22 per cent in order to arrive at a realization equal as nearly as may be to the weighted average cost of minimum price area No. 7, as determined by the Commission to be \$2.235. These resulting prices are shown on page eleven of Exhibit No. 175. It appears from the evidence that the District Board recognized that, by using the percentage method, it had the effect of distorting the differential relationships as between the different sizes and qualities of coals. They found that, instead of adding 8.22 per cent, if they would add 15 cents per ton to each such basic proposed price. this would produce a realization of \$2.235. A new page was prepared entitled "Prices for Shipment into all Market Areas, showing the average price cluding Malad, to a point just south- | per ton for each size group based upon

the minimum prices which will return the producing cost of Area No. 7 of \$2.235 per ton." The only difference between this sheet and the original page eleven in Exhibit No. 175 was that in this schedule sheet the realization of \$2.235 per ton was reached by adding 15 cents per ton to each classification of coal in a size group instead of 8.22 per cent, as has been done on the original page eleven of Exhibit No. 175. This new revised schedule sheet was sent to each Code Member with instructions to insert it in lieu of the original pageeleven of Exhibit No. 175. The new revised schedule sheet was received in evidence as Exhibit No. 177. It was never adopted by the Board. However, the evidence shows that differentials reflected in Exhibit No. 177 were fair and equitable in the opinion of the Board and in the opinion of the Code Members, and that no protests were received concerning it. It appears that this Exhibit No. 177 reflected all the factors that were considered by the Board in determining the relationships of the various coals produced within the District. As stated before, Exhibit No. 177 is entitled "Prices for Shipment into all Market Areas, showing the average price per ton for each size group based upon minimum prices which will return the producing cost of Price Area No. 7 of \$2.235 per ton," the evidence shows that the word "average" used on this Exhibit should be deleted and the Commission so finds.

It appears that while Exhibit No. 177 was never adopted in just the form set forth in the Exhibit, the same method was used by the Board in adopting another amendment to the proposed price schedule. This amendment was adopted at a meeting of the Board held September 12, 1938. It was received in evidence as Exhibit No. 178, a document consisting of five pages entitled "District No. 19 Prices in Cents Per Ton of 2,000 Pounds for Shipment into Market Areas as Shown." The Board recommended that Exhibit No. 175 be amended by striking out page eleven and inserting in lieu thereof Exhibit No. 178. The price realization in Exhibit No. 178 was reached in the same manner and the same factors were considered as were considered in Exhibit No. 177, the difference between the two Exhibits being that Exhibit No. 177 shows the same f. o. b. mine prices or price differentials for shipment into all consuming markets of District No. 19, while Exhibit No. 178 shows the prices broken down into the various consuming market areas of the District. In view of the fact that the uncontradicted evidence in the record, as will be recited later, shows that the price relationships are different in the different consuming market areas of District No. 19, the Commission finds that Exhibit No. 178 should be substituted for page eleven of Exhibit No. 175.

posed by District No. 19 divides the District into nine sub-Districts, as follows:

Sub-District No. 1, Kemmerer.

Sub-District No. 2, Rock Springs.

Sub-District No. 3, Hanna-Rawlins.

Sub-District No. 4, Evanston. Sub-District No. 5, Gebo-Kirby.

Sub-District No. 6, Hudson.

Sub-District No. 7, Sheridan.

Sub-District No. 8, Gillette.

Sub-District No. 9, Great Plains.

These nine sub-Districts are the natural geographical divisions that have been recognized and accepted by common practice for many years in the past. The coals within each of the sub-Districts are generally comparable with a few minor exceptions, which exceptions have been recognized in the price schedule with a suitable separate classification.

The Commission finds from the record that page 6 of Exhibit No. 175 should be amended so that the sub-Districts will be described so as to read as follows:

"Sub-District No. 1, Kemmerer, Lincoln and Teton Counties.

"Sub-District No. 2, Rock Springs, Sweetwater County.

"Sub-District No. 3, Hanna-Rawlins, Albany and Carbon Counties.

"Sub-District No. 4, Evanston, Uinta County.

"Sub-District No. 5, Gebo-Kirby, Hot Springs, Big Horn, Park and Washakie Counties.

"Sub-District No. 6, Hudson, Fremont County.

"Sub-District No. 7, Sheridan, Sheridan County.

"Sub-District No. 8, Gillette, Campbell County.

"Sub-District No. 9, Great Plains, Converse, Johnson and Natrona Counties."

The coal production in the Great Plains sub-District is small. The coal from these counties, and others making up the sub-District of Great Plains, being of the same general characteristics and located in the same general area, are grouped together for price-fixing purposes. The coals produced in sub-Districts of Hudson, Sheridan, Gillette and Great Plains, will vary somewhat in quality, are of subbituminous character. These coals are high in moisture, degrading rapidly when exposed to the air, and are very fragile. Gebo-Kirby District coals are of a higher quality than other coals produced in northern Wyoming, and are more nearly comparable to the coals produced in the Kemmerer and Rock Springs sub-Districts. The coals produced in the Kemmerer and Rock Springs sub-Districts are of a higher quality than those produced in northern Wyoming, with the exception of the Gebo-Kirby sub-District coals. They are all lower in moisture than those described in the northern part of the State, and, while fragile, stand exposure to the air better than the northern Wyoming

The schedule of minimum prices pro- | proximately the same as those of Rock Springs District. They are lower in moisture than Rock Springs, and they stand handling and exposure somewhat better than Rock Springs coal. They are higher in ash. Hanna-Rawlins coals are high in moisture and high in ash, and are used mostly as furnace coal. The coals in the Evanston District are subbituminous in character and are used almost exclusively in the local market.

The Mine Inspector's report for the State of Wyoming shows the production of that State for the year 1937 to be 5,950,230 tons. Of this tonnage approximately 4,000,000 tons were sold to railroads, the balance being sold to industrial plants, and to retail dealers for resale to domestic consumers.

Exhibits received in evidence, other than those heretofore stated, were:

Exhibit No. 176, which was a letter dated August 18, 1938, sent to all Code Members, together with the schedule of proposed prices:

Exhibit No. 179, Description of Market Areas;

Exhibit No. 180, Table showing "District No. 19, Realization or Yield per ton, Based on Proposed Prices to Return Price Area No. 7 Producing, Administrative and Selling Cost of \$2.235 per ton."

Exhibit No. 181, Table showing "District No. 19. Realization of Yield per ton. Based on Proposed Prices to Return Price Area No. 7 Producing, Administrative and Selling Cost of \$2.235 per ton."

Exhibit No. 182, Table showing "District No. 19, Additional Tonnage Reported by Truck Mines on the Coal Commission Form D-2 Not Included in the preceding Statement."

Exhibit No. 188, Marketing Rules and Regulations, Incidental to the Sale and Distribution of Coals of Code Members within District No. 19 (Proposed).

The District Board in its schedule of proposed prices sets up fourteen size groups. These size groups are the outgrowth of dealer and consumer demand over a period of years, and represent the best judgment of the Board. The evidence supports the various size grouping. proposed by the Board, as a proper basis for co-ordination of size groups with other Districts.

The evidence shows that District Board No. 19 used as a basis to establish the proposed f. o. b. mine prices set forth in the schedule, standard lump as the base coal. It decided upon a price for standard lump for each sub-District, and related all other sizes differentially to that price. The prices proposed for the various kinds, qualities and sizes of coal above or below the prices of standard lump, were arrived at by taking into consideration the kinds and qualities of each coal in each of the sizes prepared in each sub-District, applying thereto the standard differentials which had been recognized and accepted for a period of many coal. Kemmerer District coals are ap-1 years. In making these determinations, chemical analyses were not considered by resale to be used mostly in stoves and the Board. This was due to the fact that ranges and in homes in which the concoals in District No. 19 are not generally sold on an analysis basis.

The determination was based upon the knowledge and experience of the members of the Board and their familiarity with the marketability of the coals in the District.

The Board computed the total realization that would be derived from the sale of the tonnage of the various kinds, qualities and sizes of coal that were known to be sold in the year 1937, at the prices it fixed, reflecting these differentials. The realization shown on this basis was 16 cents below the average weighted cost of minimum price area No. 7. The Board then adjusted its prices are shown in Exhibits Nos. 177 and 178 by adding 15 cents per ton to each price proposed. By doing this the relationships were not disturbed.

Coals of comparable price, based on long experience were given the same letter classification in a particular size group. Letters are indices to the prices in each particular size group, the letter "A" representing the highest priced coal in each size group.

The evidence shows that the price differentials between the various sizes and kinds and qualities of coals, as reflected in the proposed price schedule, as amended, represent the combined judgment of the members of District Board No. 19, and that said differentials have for the most part prevailed for many years.

An examination of the proposed price schedule, as amended, shows that the prices provided for the larger sizes are considerably higher than the prices for the smaller sizes. The evidence shows that consumers require larger sizes, and, in order to satisfy the demand for prepared sizes, most operators are compelled to build a tipple at the mine, and extra power and labor are required to operate same. This entails a great expense to the operator, as well as a large investment.

Exhibit No. 178, as heretofore stated. shows "prices in cents per ton of 2,000 pounds for shipment into Market Areas as Shown." This Exhibit shows fluctuating differentials of the coals when sold in different consuming market areas. Such differences appear mostly in the Kemmerer and Rock Springs sub-Districts. The varying differentials between the prices of the various coals in the Kemmerer sub-District No. 1, Rock Springs, sub-District No. 2, Hanna-Rawlings, sub-District No. 3, and Evanston, sub-District No. 4, are based on dealer and consumer acceptance, and are the result of long experience in markets served by these coals. Such differentials as reflected in the Exhibit are approximately the same as have prevailed for a number of years. The coals from Kemmerer, sub-District No. 1, and Rock Springs, No. 2, serve different requirements and are not highly competitive.

struction is adaptable to this coal rather than that of a heavier grade. Due to the friability and high moisture content of Rock Springs coal, there is but little demand for the prepared sizes during the summer months.

Kemmerer coals are lower in moisture than Rock Springs coal, and are not so friable. Besides being used in limited quantities in domestic grates, it is used in large quantities for furnaces. There are many homes in states west of the mines where it cannot be burned as successfully as the Rock Springs coal, while, on the other hand, due to its handling qualities, it has greater dealer and consumer acceptance than Rock Springs coal. Rock Springs coal, because of its character, does not have the dealer and consumer acceptance in the territory east of the mines as does Kemmerer coal. Rock Springs coal, being a non-coking, clean coal, has greater dealer and consumer acceptance for stoker use than has Kemmerer.

The evidence shows that the true quality and size relationships are now reflected in Exhibit No. 178 between the various coals produced in District No. 19 for shipment into the consuming market areas specified.

The evidence shows that in making up the varying differentials for shipment into different consuming market areas, the District Board did not take into consideration the factor of differences in transportation charges. Exhibit No. 178, which shows price variations into the consuming market areas, should be incorporated into and made a part of the proposed price schedule, Exhibit No. 175, taking the place of page eleven, which should be deleted.

The consuming market areas referred to in Exhibit No. 178 are the same market areas that were previously established by the Commission, and are set out in Exhibit No. 179. These consuming market areas are the same consuming market areas in which the coals produced in District No. 19 have been sold for many years and in which they are now being sold.

The Commission finds that the description of these consuming market areas set forth in Exhibit No. 179 should be incorporated in and made a part of the proposed price schedule, Exhibit No. 175.

The Commission finds that, by the adoption of Exhibit No. 178, page 2 of Exhibit No. 175 serves no useful purpose, and should be deleted.

The Commission finds from the evidence that Item 3, page 4, of Exhibit No. 175, which reads as follows:

"All size designations herein are for round hole 'screens. When other types of screens are used the round hole equiv. alent shall control the size,"

should be deleted, and the following lan-

"All size designations herein are for round hole screens, or their equivalent. When other types of screens are used, the District Board shall determine the actual size designation of the coal so prepared, with the approval of the Coal Commission."

The Commission finds from the evidence that Item 4, page 4, of Exhibit No. 175, which reads as follows:

"All prices herein are per net ton 2,000 lbs. f. o. b. transportation facilities at the mines unless otherwise designated,"

should be deleted, and the following language should be inserted in lieu thereof:

"The prices listed herein are in cents per net ton of 2,000 pounds, f. o. b. transportation facilities at the mine."

The Commission finds from the evidence that Item 6, page 4, of Exhibit No. 175, which reads as follows:

"If any size is made for which a price is not designated herein, such shall be sold at the price applicable to the next larger size.'

should be deleted, and the following language should be inserted in lieu thereof:

"When any size of coal is sold, in which the maximum top or bottom size exceeds the sizes scheduled, then such coal must be included in the next higher priced size group and priced accordingly."

It appears from the evidence that District Board No. 19 recommends that the words "all pea size not included in Group No. 7," shown under Size Group 8, page 5, of Exhibit 175, should be deleted, and the Commission finds that these words should be deleted as is recommended.

The evidence shows that the District Board recommends that Exhibit No. 175. page 5, under Size Group 9, be amended by adding: "and railroad locomotive fuel," so that it will read: "Mine Run 8" Resultant and Railroad Locomotive Fuel." The Commission finds that this amendment should be made.

And now upon the record herein, upon the evidence, both documentary and otherwise, and upon the above and foregoing facts found to exist, the Commission finds:

That the District Board for District No. 19 as directed in Order No. 245 of the Commission, proposed minimum prices free on board transportation facilities at the mines for kinds, qualities and sizes of coal produced within the district, classification of coal and price variations as to mines and consuming market areas

That the District Board for District No. 19, as directed in Order No. 245 of the Commission, submitted to the Commission a schedule of such proposed minimum prices, together with the data upon which same were computed, in-Rock Springs coal is sold to dealers for guage should be inserted in lieu thereof: | cluding, but without limitation, the factors considered in determining the price relationships.

That the minimum prices proposed by the District Board for District No. 19, as herein modified, reflect, as nearly as possible, the relative market value of the various kinds, qualities, and sizes of coal produced within the district; are just and equitable as between producers within the district; have due regard to the interests of the consuming public, and do not permit dumping.

That the minimum prices proposed by the District Board for District 19 for any kind, quality or size of coal for shipment into any consuming market area, as herein modified, are just and equitable between producers within the district.

That the minimum prices proposed by the District Board for District 19, as herein modified, yield a return per net ton for the district equal as nearly as may be to the weighted average of the total costs, per net ton, of the tonnage of Minimum Price Area 7, the price area in which District 19 is placed under the Act.

That the schedule of proposed minimum prices, as amended, and submitted to the Commission by the District Board for District 19, as amended, corrected, modified and revised, as hereinabove set forth, conforms to Order No. 245 of the Commission and to the requirements of Section 4-II (a) of the Act, and as so amended, corrected, modified and revised said schedule should be and the same is hereby approved by the Commission to serve as a basis for the coordination provided for in Section 4-II (b) of the Act. A copy of said schedule as amended, corrected, revised and modified appears in the Appendix for District 19.

APPENDIX FOR DISTRICT NO. 19

Schedule of Minimum Prices, as Modified and Approved, to Serve as a Basis for Coordination

Note.—The prices in this schedule are not the final prices that will be established on coal for shipment by Code Members within this district into consuming markets of this district. In the ultimate establishment of the effective minimum prices, pursuant to subsection (b) of Part II, Section 4 of the Act, the minimum prices in this schedule are subject to such increase or decrease respectively, as may be necessary to carry out the provisions of subsections (a) and (b) of Part II, Section 4 of the Act.

F. W. McCullough, Secretary.

Issued: December 9, 1938.

TABLE OF CONTENTS

Alphabetical list of Code Members. Geographical description of Market Areas. Identification of sub-district numbers. Price Instructions and Exceptions. Prices. Size Groups.

PRICE INSTRUCTIONS AND EXCEPTIONS

Item No. 1.—The schedule of prices shown herein applies f. o. b. transportation facilities at mines on all coal produced by Code Members in the District shown on the title page hereof.

Item No. 2.—All prices are subject to the Marketing Rules and Regulations issued by the National Bituminous Coal Commission.

Item No. 3.—When any size of coal is sold, in which the maximum top or bottom size exceeds the sizes scheduled, then such coal must be included in the next higher *priced* size group and priced accordingly.

Item No. 4.—All prices herein are in cents per net ton of 2,000 lbs. f. o. b. transportation facilities at the mines.

Item No. 5.—When coal is subjected to any chemical, oil or waxing process, an additional charge of not less than 25 cents per net ton shall be made.

Item No. 6.—All size designations herein are for round hole screens, or their equivalent. When other types of screens are used, the District Board shall determine the actual size designation of the coal so prepared, with the approval of the Coal Commission.

Item No. 7.—In the sale of coal to destined points outside the boundary of the United States, prices stipulated herein are for payment in United States funds.

Size Groups

Size group No.	Sizes included	
1	6" Lump. 7" Lump. 8" Lump.	
2	9" Lump. 3" Lump. 4" Lump. 5" Lump.	
3	1/" to 28/" Lump.	
4	31.0" x 9" Lump. 21.2" x 6", 7" or 8" Stove or grate. 3" x 6", 7" or 8"	•

Size Groups-Continued

Size group No.	Sizes included
5	1½" x 6", 7" or 8" 1½" x 6", 7" or 8" 1½" x 6", 7" or 8" 1½" or 3" x 5"
	11/2 x 3", 3", 4" or 5" Egg nut or standard 11/2" x 3", 4" or 5" Egg nut or standard nut.
7	1½" x ½" or 1" 1½" x 1" or 1½"}No. 1, pea.
8	11%" x 1/4", No. 2, Pea.
9	Mine run.
10	8" resultant and railroad locomotive fuel. 6" resultant. 7" resultant.
11	2" x 0" Slack.
12	1½" x 0" 1½" x 0" Slack.
13	15g" x 0") 1" x 0", Screenings.
. 14	Maximum bottom size Dust.
	1/2" 0"

IDENTIFICATION OF SUB-DISTRICT NUMBERS Sub-District Number and Identification

1. Kemmerer.—Lincoln and Teton Counties.

2. Rock Springs.—Sweetwater County.

3. Hanna-Rawlins.—Albany and Carbon Counties.

4. Evanston.—Uinta County.

5. Gebo-Kirby.—Hot Springs, Big Horn, Park and Washakie Counties.

6. Hudson.—Fremont County.

7. Sheridan.—Sheridan County.

8. Gillette.—Campbell County.

9. Great Plains.—Converse, Johnson and Natrona Counties.

Alphabetical List of Code Members Showing Price Classification and Size Group Nos.

	Mine name	Sub dist.	Seam or kind		Pri	ce	clas	sií		tio No		nd	si	ze (gro	up	,
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Prices in Cents Per Net Ton of 2,000 Pounds for Shipment Into Market Areas as | of Hastings, Minn.; thence north in-Shown—Continued

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148 to 156 Inclusive		C365	E290			F255		E165	E215		B140			
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136, 137, 138, 142, 143, and 150 104, to 116, inclusive, 139, 140, and			1	0 A480	i .	1	1	- 1	B285	i]			C140	
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144 and 145 146 148 and 149	1 A 44	51 A 44	OI A 43	5 A395 5 A455 0 A430 5 A445	A43	B35	0 B2	55				B17	5 C140 5 C140 5 C140	0
153, 154, 155 and 156	_ A47	5 A 46	0 A44	5 A445 5 A375	[A41	B35	0 B2	65	B28	5		- B21 	5 C19	·
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140 and 143	D21				D16 D23		- E14 E19					E115		
33, 34, 101, 104 to 116 inclusive and	D20	5		D18	D16.	<u></u>	E14	55			C12	E118	5 2	
146, 146, 147 144 150	D30 D34	5			D25 D29		- E19	90	C25			E130 E120		
		FRO	M S	UBDI	STR	CT	NO.	7						
33, 34, 100, 101, 104 to 117, inclusive: 133, 137 to 141, inclusive, and 143	K19 K21	0		H179	F15 F16	D H15	0 H1:	35				G10.	5	
145 to 148 inclusive; 151 to 156, inclusive	· `	5		H190	F15	5 H15	5 H1	35			E11 E11	5 G 10.	5 D11	
149 150	K19 K18	0	-	_ H17	F16 F18	5 H16	5 H1	40	F18		E130	0 G11 5 G10	5 D110	5
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144 to 147, inclusive	J21 J19		J19				5 H1 5 H1		H14	5		G10 G10		
		FRO	M S	ÜBDI	STR	ют	NO.	9						
150	G2	75 G2	75 G2	55 G 25	5 E23	5 G2	35	Н1	40 D23	5		- F11	5	_ C65

See "Price Instructions and Exceptions".

MARKET AREA TO WHICH PRICES APPLY

The States of:

- 1. California.
- 2. Colorado.
- 3. Idaho.
- 4. Iowa.
- 5. Kansas.
- 6. Minnesota.
- 7. Missouri. 8. Montana.
- Nebraska.
- 10. Nevada.
- 11. North Dakota.
- Oregon.
- 13. South Dakota. 14. Utah.
- 15. Washington.
- 16. Wyoming; Alaska; Canada.

GEOGRAPHICAL DESCRIPTION OF CONSUMING, DESCRIPTION OF MARKET AREAS (IN DETAIL)

Market Area No. 33.—Beginning at the Minnesota-Iowa-Wisconsin state line running west on the Minnesota-Iowa state line to a point west of the C. M. St. P. & P. R. R.; thence northwest including all points on the C. M. St. P. & P. to but excluding Mankato; thence east excluding points on the main line of the C. & N. W. to the Mississippi River: thence down the Mississippi River to the starting point of this area.

Market Area No. 34.—Beginning at a point just south of and including Mankato: thence east including all points on the main line of the C. & N. W. to the Mississippi River including Minnesota City; thence northwest following the

cluding points on the C. M. St. P. & P. R. R. to and including Stillwater and Duluth Junction; thence west and southwest including points on the M. St. P. & S. S. M. to and including Minneapolis: thence southwest to a point just west of Chaska, including Chaska; thence south including points on the Minneapolis and St. Louis R. R. to and including Montgomery; thence southwest including points on the C. M. St. P. & P. R. R. to and including Kasota; thence south including points on the C. M. St. P. & P. from Kasota to Mankato, inclusive, the starting point of this area.

Market Area No. 100 .- All points in northern Minnesota north and west of the following described line. Beginning at a point on the state line south of Elkton, South Dakota, and including all points on the C. & N. W. to and excluding Mankato; thence northeast excluding points on the C. M. St. P. & P. R. R. from Mankato to Montgomery, excluding Montgomery, Kasota, and Mankato; thence north excluding points on the Minneapolis & St. Louis R. R. to and excluding Carver and Chaska; thence northeast on an airline to a point north of Minneapolis; thence northeast excluding points on the M. St. P. & S. S. M. R. R. to the Wisconsin-Minnesota state line.

Market Area No. 101.—Beginning at the South Dakota-Minnesota-Iowa state line running east on the Minnesota-Iowa state line to a point just west of the C. R. I. & P. R. R. just southeast of Glenville, Minnesota; thence northwest, excluding points on the C. R. I. & P. R. R. to and excluding Albert Lea; thence northwest excluding points on the C. M. St. P. & P. R. R. to and excluding Wells; thence west and north excluding points on the C. M. St. P. & P. R. R. to and excluding Mankato; thence west excluding points on the main line of the C. & N. W. R. R. to the point of beginning.

Market Area No. 104.—Beginning at a point southeast of Sioux City, excluding Sioux City, running southeast on an airline to a point immediately north of Minden; thence east excluding points on the C. R. I. & P. R. R. to and excluding Atlantic; thence crossing the C. R. I. & P. R. R. east of Atlantic including points thereon, to and including Des Moines: thence crossing the railroad continuing east excluding points on the C. R. I. & P. R. R. to but excluding Grinnell; thence north excluding points on the Minneapolis and St. Louis R. R. to, but including Marshalltown; thence west excluding Minerva Junction; thence north excluding points on the Minneapolis & St. Louis R. R. to and excluding Eldora; thence northwest excluding points on the C. & N. W. R. R., excluding Iowa Falls, Alden, Dows, and Clarion; thence northeast excluding points on Mississippi River to a point just south the Chicago, Great Western R. R. to and excluding Mason City; thence north ex- | points on the C. R. I. & P. R. to and | on the Missouri Pacific to the south; cluding points on the C. R. I. & P. R. R. to the Minnesota-Iowa state line; thence west following the state line to the South Dakota-Iowa-Minnesota state line: thence south following the Iowa-South Dakota state line to the point of beginning, excluding Sioux City.

Market Area No. 105.—Beginning at a point just northwest from Eldora; thence north excluding points on the Minneapolis and St. Louis R. R. to and excluding Hampton; thence north including points on the C. R. I. & P. R. R. to but excluding Mason City; thence southwest including points on the C. G. W. R. R. to and including Clarion; thence southeast on an airline to the point of beginning, including Clarion, Dows, and Alden.

Market Area No. 106 .- Points in eastern Iowa. Beginning at the northeast corner of Iowa on the Mississippi River; thence south down the river, excluding points on the C. M. St. P. & P. R. R. from Clinton to Davenport, both excluded; thence west following the river to a point south of Muscatine; thence west including points on the C. R. I. & P. R. R. to and including Thornburg; thence west on an airline to a point southwest of New Sharon, including New Sharon; thence north including points on the Minneapolis & St. Louis R. R. to but excluding Marshalltown; thence west including Minerva Junction; thence north including points on the Minneapolis & St. Louis R. R. to and including Hampton; thence north excluding points on the C. R. I. & P. R. R. to Mason City but including Mason City: thence north to the Minnesota-Iowa state line, including points on the C. R. I. & P. R. R.: thence east following the Minnesota-Iowa state line to the point of beginning.

Market Area No. 107.-Beginning at a point just south of Muscatine, Iowa; thence west excluding points on the C. R. I. & P. R. R. to and excluding Thornburg; thence west to a point just south of New Sharon, Iowa; thence south including points on the Minneapolis & St. Louis R. R. to and including Oskaloosa; thence southeast excluding points on the C. R. I. & P. R. R. to and excluding Ottumwa; thence east including points on the C. B. & Q. R. R. to and including Burlington, Iowa; thence north up the Mississippi River to the point of beginning.

Market Area No. 108.—Beginning at a point on the Missouri-Iowa state line due south of Bloomfield, Iowa, running north excluding points on the Wabash to and excluding Ottumwa; thence east excluding points on the C. B. & Q. R. R. to the Mississippi River; thence south down the River to the Iowa-Illinois-Missouri state line; thence northwest and west on the Missouri-Iowa state line to the point of beginning.

Market Area No. 109.-Beginning at a point south of Sioux City, Iowa running on an airline southeast to a point just north of Minden; thence east including Jackson County, Missouri; Martin City south to and including Center, Colorado;

including Atlantic: thence crossing the railroad east of Atlantic and excluding points on the C. R. I. & P. R. R. to and excluding Des Moines; thence continuing east including points on the C. R. I. & P. R. R. to a point just west of Grinnell; thence south excluding points on the Minneapolis and St. Louis R. R. to and excluding Oskaloosa; thence southeast including points on the C. R. I. & P. R. R. to and including Ottumwa; thence northwest including points on the C. B. & Q. R. R. to but excluding Frederic; thence west excluding points on the C. B. & Q. R. R. to the Missouri River; thence north up the Missouri River to the starting point of this area, excluding Council Bluffs, Omaha, and Sioux

Market Area No. 110 .- Beginning at the Missouri-Iowa state line south of Bloomfield, Iowa; thence north including points on the Wabash R. R. to but excluding Ottumwa; thence northwest excluding points to but including Frederic; thence west including points on the C. B. & Q. R. R. to the Missouri River: thence south following the Missouri River to the Nebraska-Iowa-Missouri state line; thence east on the Iowa-Missouri state line to the point of beginning.

Market Area No. 111.-Omaha and Council Bluffs. Switching limits of Omaha, Nebraska, and Council Bluffs, Iowa.

Market Area No. 112.—Sioux City. Greater Sioux City.

Market Area No. 113.-Northwest Missouri. The counties of Andew, Atchison, Buchanan except St. Joseph, Clinton, DeKalb, Gentry, Holt, Nodaway, Platte. and Worth in the state of Missouri.

Market Area No. 114.-St. Joseph, Switching limits of St. Joseph, Missouri.

Market Area No. 115.-North Missouri. Bounded on the north by the Iowa-Missouri state line; bounded on the east by the territory west of but not including towns on the main line of the C. B. & Q. Railroad, St. Louis north to the Iowa state line; on the west by the western county lines of Harrison, Daviess, Caldwell, and Clay counties; and on the south by the south boundary lines of Clay, Ray, Saline, Howard, Boone, Callaway, Montgomery, Warren, and St. Charles Counties, and including the cities of Boonville. Missouri, and Jefferson City, Missouri, located on the south bank of the Missouri River.

Market Area No. 116.-Greater Kansas City. In Wyandotte and Johnson Counties, Kansas: Missouri Pacific River Route to a point approximately even with the Western University Annex on the West; thence to Welborn on the Leavenworth Electric Line; thence to Muncie on the Union Pacific and K. S. K. V. & W.; thence to Turner on the A. T. & S. F.; thence through Shawnee to Merriam on the Frisco; thence to Overland Park on the Missouri & Kansas Railroad. In R. G. W. west of Mears junction; thence

Grand View on the K. C. S. and Frisco; Raytown on the C. R. I. & P.: Independence on the Alton and Missouri Pacific.

Market Area No. 117.—Bounded on the north by the Missouri River from Sibley, Missouri, east to the western county boundary line of Saline County. thence south to the southern boundary of Saline County, thence east and northeast following the boundary line of Saline County to the Missouri River, thence the Missouri River east to St. Louis, except the towns of Boonville and Jefferson City on the south bank of the Missouri River, bounded on the west by an imaginary line drawn from Sibley. Missouri, on the Missouri River south and west to Lees Summit in Jackson County, thence southward and east of the line of the Missouri Pacific Railroad, Lees Summit to Lamar, and excluding all points on the Missouri Pacific Railroad. thence eastward and north of the main line of the St. Louis and San Francisco Railroad, Lamar to Cape Girardeau and excluding all points on the main line of the St. Louis and San Francisco Railroad; bounded on the east by the Mississippi River, St. Louis to Cape Girardeau.

Market Area No. 132-General description.—Tennessee Pass and west.

Specific description.—To points in western Colorado and eastern Utah beginning at a point on the Colorado-Wyoming state line at the boundary line of Market Area No. 133 and running west on the Wyoming-Colorado state line to the Colorado-Utah state line; thence south on the Colorado-Utah state line to and including Watson, Rainbow Junction, Rainbow, and Dragon, Utah, to the Utah-Colorado state line; thence south to the junction of Colorado, New Mexico. Arizona and Utah: thence east to a point west of the Farmington branch line, dropping south including said branch line and returning to the state line; thence following the D. & R. G. W. (south of the D. & R. G. W.) to the vertex of Market Area No. 133 south of Antonito, Colorado: thence continuing on the boundary of No. 133 to the point of beginning.

Market Area No. 133-General description.—Colorado east of Tennessee Pass.

Specific description.-To points in Colorado not included in Market Areas 135 and 134 east of a line beginning at the Wyoming-Colorado state line just west of Slater. Colorado: thence on an air-line south to a point just southwest of Craig; thence east to a point just west of Steamboat Springs; thence south crossing the D. & R. G. W. just southwest of Orestod; thence southeasterly running north of Watts; thence south crossing the D. & R. G. W. just south of Deen; thence running south just west of the D. & R. G. W., crossing the D. & R. G. W. between Poncha Junction and Salida, again crossing the D. &

thence west to and including Creede; thence southeast to the state line where it converges with the boundary of Market Area No. 131 on the Colorado-New Mexico state line immediately south of Antonito, including Antonito; thence east to the Colorado-Kansas state line; thence north on the Colorado-Kansas state line to the Colorado-Nebraska state line; thence west on the Colorado-Nebraska state line to the starting point of this area.

Market Area No. 134.—Pueblo.

Market Area No. 135.-Denver and environs including Clear Creek Valley to and including Silver Plume.

Market Area No. 136.—Points south of the main line of the Union Pacific Railroad, west of Market Area No. 139 in Kansas.

Market Area No. 137.-Kansas points on and north of the main line of the Union Pacific excluding Salina and points in Market Area No. 138.

Market Area No. 138.—Salina, Kansas. Market Area No. 139.—Points on and east of a line from Marysville, Irving, Garrison, Manhattan, Salina (excluding Salina), McPherson, Newton, Wichita, and South Haven, Kansas to the Kansas State Line.

Market Area No..140.—Nebraska points on and east of a line from the Missouri River at Running Water through, but not including Bloomfield, Randolph, to and including Norfolk, thence southeast to and including Scribner, Fremont, and thence through Linwood to Wahoo, Valparaiso, Lincoln, Crete, DeWitt, Beatrice, and Wymore to the Kansas state line, excluding Lincoln and Omaha.

Market Area No. 141.-Lincoln, Nebraska; switching limits of Lincoln.

Market Area No. 142.—Western Nebraska#C. & N. W. Wyoming line to, but not including Eli, Nebraska; C. B. & Q. Wyoming line to, but not including Grand Island, Nebraska.

Market Area No. 143.—Remainder of Nebraska.

Market Area No. 144.-That part of South Dakota west of and including Rapid City and known as the Black Hills District and south of Market Area No.

Market Area No. 145.-That portion of South Dakota east of Rapid City to and west of the Missouri River not included in Market Areas Nos. 144 and 147.

Market Area No. 146.-That portion of South Dakota east of the Missouri River not included in Market Area No. 147.

Market Area No. 147.—All of North Dakota and that part of South Dakota north of a line drawn east and west one mile south of Watertown.

Market Area No. 148.—All points in the state of Montana except that portion described in Market Area No. 149.

Market Area No. 149.—All points on the main line of the C. B. & Q. Railroad from the Wyoming-Montana state line to and including Billings via Toluca, Montana.

ming.

Market Area No. 151,-To points in Utah south of a line running east and west through Ogden except that portion in Utah described in Market Area No. 132.

Market Area No. 152-General description.—States of Nevada, California, and to points in extreme southeastern Idaho.

Specific description.—Beginning at a point on the northern boundary of No. 151 near Wahsatch, Utah, continuing westward on this boundary to the Nevada-Utah state line; thence south following the state lines of California and Nevada, following the western boundary of Nos. 130, 131, where possible, thus excluding Needles, returning northward via the Pacific Coast to the northwest corner of California; thence east on the state lines of California, Oregon, Nevada, and Idaho to a point just west of the "Ogden-Malad Line" of the O. S. L.; thence due north, excluding Malad, to a point just southwest of McCammon, Idaho; thence due east to the Idaho-Wyoming state line, excluding McCammon and Grace; thence south on the Wyoming state line to the point of beginning.

Market Area No. 153 .-- Oregon, Washington, and Idaho, except that area described in Market Areas Nos. 152, 154, 155 and 156.

Market Area No. 154.-City of Spokane, Washington, and adjacent points where freight rates on coal from Producing Areas on the Canadian Pacific and Spokane & International R. R. are as low or lower than the rates on the Northern Pacific R. R. from Roslyn and Bayne rate groups.

Market Area No. 155.—Points in Washington on the Great Northern R. R. east of the Cascade Tunnel to Wenatche and north thereof.

Market Area No. 156.—City of Seattle, Washinton.

Market Area No. 157.—Territory of Alaska.

MINIMUM PRICE AREA NO. 7-DISTRICT No. 20

PROPOSED MINIMUM PRICES

In compliance with Order No. 245 of the Commission, the District Board for District 20 proposed minimum prices free on board transportation facilities at the mines for kinds, qualities and sizes of coal produced within the district and submitted a schedule of same. together with the data upon which same were computed, to the Commission. Said schedule of minimum prices as proposed by the District Board for District 20 and submitted to the Commission appears in the record as Exhibit No. 136.

Upon receipt of Order No. 245 of the Commission, the District Board for District 20 called a meeting to be held on of 150 miles. The Cliffs are from 1,000 ing being to proceed to propose mini-lying south of the Cliffs and at points

Market Area No. 150 .- State of Wyo- | mum prices as directed in said order. The District Board for District 20 held said meeting and the schedule of minimum prices proposed by the District Board for District 20 and submitted to the Commission was, at said meeting, passed upon and adopted by the Board.

After said schedule had been adopted by the District Board for District 20, a copy of same was transmitted to each of the code members within the district. Subsequent to the transmittal of copies of said schedule to the code members within the district, certain protests against same were received. Upon receipt of such protests, the District Board for District 20 issued a call for a special meeting to be held on August 22, 1938, for the purpose of considering the protests filed against said schedule. The above meeting failed for want of a quorum but a meeting was held later on August 31, 1938. At this meeting all protests to the schedule were considered and acted upon.

A protest was filed by the Independent Coal and Coke Company against the proposed price of \$1.45 per ton on 3" x 0" dust. The protest of the Independent Coal and Coke Company was granted by the Board by resolution (Exhibit 137), and a price of \$1.70 per ton on 18" x 0" dust was approved. A protest was also filed against said schedule by the Lion Coal Corporation. The protest of the Lion Coal Corporation was, after due consideration, denied. The change due to granting the protest of the Independent Coal and Coke Company does not appear in the price schedule submitted to the Commission by the District Board.

Another amendment to the schedule was found proper and by resolution was adopted by the Board. This amendment relates to additional charges to be made upon oiling, waxing, or otherwise chemically processing coal. The resolution appears in the record as Exhibit 138 and authorizes a charge of 25 cents per ton on all sizes of coal below and including 1%" x 0" slack when so treated and a charge of 10 cents per ton upon 1%" x 1" (Pea coal) and an additional charge of 10 cents per ton on all other sizes.

Testimony in support of minimum prices proposed by District Board No. 20 was adduced by an expert witness, namely, the Secretary of the District Board who is thoroughly familiar with the marketing and distribution of coals in District No. 20. His knowledge of the coals in said District is based upon years of experience in the District. It appears that the members of the District Board of District No. 20 are all experienced coal men, familiar with producing and marketing coal in said District.

The coals principally produced in Utah (District 20) are from the Book Cliffs Coal Field and the Wasatch Plateau Field. These fields extend over a distance August 9, 1938, the purpose of said meet- to 2,000 feet higher than the lowlands

reach a height of 6,000 feet above same. The outcrops occurring so far above the 20 in the year 1937 was 3,676,088 tons, canvon floors are reached by long surface incline tramways necessary to bring the coal down to tipple sites accessible to the railroads. The coal beds in the Book Cliffs and Wasatch Plateau Fields range from five feet in thickness to thirty feet in thickness. More than 90% of the coal mined in Utah comes from Carbon and Emery Counties. The coal from this area is a high grade bituminous coal carrying from over 12,000 to 13,000 B. t. u.'s on an air dried basis, and is an excellent domestic and steam fuel. Analyses show that such coal contains a high percentage of volatile matter which makes it ignite readily. Such coal is hard and stores well. The coal beds in Grand, San Pete and Sevier Counties are an extension of those in Carbon and Emery Counties and have the same general characteristics. The above counties constitute Sub-district No. 1 in the schedule (Exhibit 136). namely, Castlegate - Hiawatha. Such coals have a proximate analysis of approximately 5% moisture, 42% volatile matter, 47% fixed carbon or coke, 6% ash, and 1% sulphur, and 12,800 B. t. u.'s. All the above coals in all sizes in the schedule take the price classification "A."

The coals in Sub-district No. 3, namely, "Coalville-Vernal," range from sub-bituminous to bituminous of a fair quality. All of the coals from this subdistrict in all sizes as shown in the schedule (Exhibit 136) are classified for price purposes as "B". The sub-bituminous coal in the "Coalville" group has a heating value of from 10,000 to 11,000 B. t. u.'s but because of its high moisture content such coal crumbles and slacks or exposure to the air and is, therefore, not suitable for storage. When used soon after mining, such coal makes a good fuel for domestic and steam purposes. Such coals are generally known to analyze approximately 15% moisture, 38% volatile matter, 43% fixed carbon or coke, 4% ash, 1.5% sulphur, and B. t. u.'s, 10,800.

The coals mined in the Vernal group are very friable, soft and have poor stocking qualities. Such coals have a high ash content and are far removed from railroads and serve only local communities within the area known as the Uintah Basin.

Such coals generally analyze approximately 10% moisture, 33% volatile matter. 45% fixed carbon, 12% ash, 1% sulphur, and B. t. u.'s, 10,700.

The coals of Sub-district No. 2 identifled as "Cedar City" in the schedule (Exhibit 136), mined in Garfield, Kane, Iron and Washington Counties, are classified in the price schedule in all size groups for price classification under the letter "B". Such coals are remote from railroads and are mined only to the extent necessary to meet the needs of the several communities. Coals produced in this field are used exclusively for domestic purposes.

of which 1,761,372 tons were consumed by the railroads, sugar companies, cement plants, milk plants, smelters, ice companies, metal mines, the United States Government and public utilities, including captive tonnage produced; 1,543,392 tons were consumed by domestic consumers; and 371,324 tons were consumed by small industries.

The District Board for District No. 20 proposed 15 size groups for the coals in said district, ranging from Size Group No. 1 (lump coal) with a maximum top size of eleven inches and maximum bottom size of eight inches to Size Group No. 15 (mine run), top size three inches, maximum bottom size zero.

The history of the various sizes produced and sold in the State of Utah was considered by the Board in determining the size groups in the schedule. sizes appearing in the schedule, with but two exceptions, have been constantly and regularly sold in District 20 for many years in the past and constitute all of the sizes marketed in the past. The two exceptions are that with the advent and development of mechanical methods of burning coal and especially the development of the domestic stoker, it was found that a smaller size of slack was required. There was then produced Size Group 11, 1" x 0" slack, a size suitable for such type of equipment. Certain manufacturers and certain consumers demanded a coal with a proportion of the extreme fines removed. This occasioned Size Group 9, 1" x 3/16".

The evidence supports the various size groupings proposed by the Board as a proper basis for coordination of size groups with other districts.

In establishing the f. o. b. mine prices appearing in its schedule of proposed minimum prices, the District Board for District 20 first determined what should be the price of 8" x 11" lump, the top size, so that this price, when correlated with other sizes, would result in a proposed price schedule yielding approximately the weighted average cost of Minimum Price Area 7, as determined by the Commission, to wit: \$2.235.

Many different samples of proposed minimum price schedules were considered by the District Board for District No. 20 before reaching a final determination. Said Board by its action established price relationships between the various sizes and qualities of coal which it considered to be fair and equitable as between code members in District 20 and to consumers.

The classification of coals in District No. 20 as "A" and "B" were determined by the Board in this manner. Class "A" coals are all of a very comparable character and meet equally in competitive markets. All the coals classified "B" are, from the standpoint of their acceptability in the market in the past, comparable. The differentials between coals classified "A" and coals classified "B."

The tonnage produced in District No. and between the sizes in each class, represent the considered judgment of the District Board as to the relative prices obtainable in the markets served by Utah producers making allowances for past customer practice, the expectation of demand of the trade, and the quality and preparation of the production. The judgment of the members of the Board was based upon their knowledge and experience and their familiarity with the marketability of the coals in the District.

> In the judgment of the District Board. if the code members classified "B" had not been so classified and had been placed in "A" classification, the existing fair competitive relationships would have been destroyed and same would not be equitable as between the producers within the district. In addition, a substantial displacement of tonnage would result which would destroy the business of certain producers. Physical characteristics of coal reflecting its burning, weathering and storing ability are predominant factors in determining consumer demand and consumer acceptance. Such factors governed the District Board in its classification of coals marketed in District No. 20.

> Analyses practically played no part in determining the classification of coals in District No. 20 by the Board. This for the reason that coals are not generally sold on an analysis basis in District No.

> The price differentials in the judgment of the District Board for District No. 20 correctly reflect the relative market value of the various kinds, qualities and sizes of coal to which they are applicable. Price differentials between coals, f. o. b. transportation facilities at the mines, are constant and remain the same in all markets during normal periods except for differences in transportation methods and charges.

> The consuming market areas determined by the District Board as set forth in the price schedule reflect the markets in which coals from District No. 20 have been sold for many years in the nast.

> Values as to uses were not proposed by the District Board for District No. 20 for the reason that the coals in District No. 20 are considered an all-purpose fuel.

> In the judgment of the members of District Board No. 20 and in the opinion of the expert witness who testified on behalf of the Board, the minimum prices proposed by District Board No. 20 conformed to the standards set out in Commission Order No. 245 and in Section 4-II (a) of the Act.

> The United States Fuel Company filed a protest against the Resolution adopted by the District Board for District No. 20 (Exhibit 137). The protestant urged the Commission to establish a price of \$1.45 per ton on $\frac{3}{16}$ " x 0" dust as originally proposed by the District Board for District No. 20, and in support of its protest, the protestant introduced evi-

dust coal and not a slack coal; that the market for dust coal is limited; that $\frac{3}{16}$ " x 0" dust is suitable only for use in powdered coal equipment and is not as desirable a fuel for such purpose as the slack sizes, either 1\%" x 0" or 1" x 0", both of which are used not only for powdered fuel but are used in chain grate stokers and hand-fired plants; that there is a greater difference in use value between $\frac{3}{16}$ " x 0" dust and 1" slack than there is between 1" slack and 1%" slack, yet 1" slack and 1%" slack are both generally used in steam plants with practically the same type of equipment; that a differential of 15 cents between 1" slack and 1%" slack has existed for many years; that the realization from 1" x $\frac{3}{18}$ " stoker coal and $\frac{\dot{s}}{16}$ " x 0" dust at the respective proposed prices of \$2.10 and \$1.45 per ton is \$1.86 as against the proposed price of \$1.70 per ton on 1" x 0" slack; and that 3'' x 0'' dust has never been actually sold at the price of \$1.70 and a price on $\frac{3}{16}$ " x 0" dust lower than on 1" x 0" slack will not divert tonnage to the lower priced coal.

In view of the price variation shown between 1" slack and 15%" slack, both of which are more or less interchangeable, a price variation should exist between 18" x 0" dust coal and 1" slack which sizes are not wholly interchangeable, and the schedule of proposed minimum prices as submitted to the Commission by the District Board for District No. 20 should be approved to the extent of establishing a differential of 25 cents on $\frac{3}{16}$ " x 0" under 1" x 0", retaining the price of \$1.45 per ton on $\frac{3}{16}$ " x 0" dust originally proposed by the District Board.

As shown in Exhibits 139 to 142 inclusive, the minimum prices proposed by the District Board for District No. 20 would yield \$2,2590 per ton as an average for the production of District 20.

Exhibit 139 contains a computation setting up the percentages according to sizes produced by Utah producers in the year 1937 and shows the application of the price schedule proposed and the return resulting from the application of the price schedule to the percentages of sizes. The realization resulting from this computation is shown to be \$2.2349.

Exhibit 140 is supplemental to Exhibit 139. Exhibit 140 contains computations upon captive tonnage of 283,872 tons and truck mine tennage of 82,485 tons. Said Exhibit also includes an additional charge of 25 cents per ton on 276,086 tons of coal treated chemically, etc. These elements were not taken into consideration in Exhibit 139. After such elements had been taken into consideration, the realization resulting was \$2,2590. The realization computed in Exhibit 140 did not give effect to the No. 20, as directed in Order No. 245 of District Board's increase in the price on the Commission, proposed minimum and increase in the price on the Commission, proposed minimum Issued: December 9, 1938.

dence to the effect that 18" x 0" is a cordingly, the modification of the facilities at the mines for kinds, qualischedule of minimum prices by reducing the price of $\frac{3}{16}$ " dust to \$1.45, as originally proposed by the District Board, does not change the realization.

> And now upon the record herein, upon the evidence, both documentary and otherwise, and upon the above and foregoing facts found to exist, the Commission finds:

> That the schedule of minimum prices, as amended, and submitted to the Commission by the District Board for District No. 20 should be corrected and revised in order that same may better conform to Order No. 245 of the Commission and to the provisions of Section 4-II (a) of the Act, and said schedule is in the following respects modified:

> Item 5 on page 3 of the schedule should be revised to read. "The prices listed herein are in cents per net ton of 2,000 pounds, f. o. b. transportation facilities at the mines."

> Item 6 on page 4 of the schedule should be revised to read, "When any size of coal is sold, in which the maximum top or bottom size exceeds the sizes schedule, then such coal must be included in the next higher priced size group and priced accordingly."

> Item 3 on page 3 of the schedule should be revised to read, "All size designations herein are for round hole screens or their equivalent, except that sizes smaller than 15%" may be screened When other other types of screens. types of screens are used, the District Board shall determine the actual size designation of the coal so prepared with the approval of the Coal Commission."

> Page 3 of the schedule should be amended by adding a new item thereto to be known as Item 7, the item so added to read, "When coal is subjected to any oil, wax, or chemical process, the following charges shall be made: Upon Size Groups Nos. 10, 11 and 12, a charge of 25 cents per ton shall be made; upon all other Size Groups, a charge of 10 cents per ton shall be made."

> Page 4 of the schedule should be revised by deleting both notes at the bottom of the page since the subject matter in such notes is already covered by clauses on page 3 of the schedule.

> Page 11 of the schedule should be amended by striking therefrom the price of \$1.25 from Size Group 12, Classification "B". This, for the reason that no code member in District 20 produces "B" coal in such size group.

> The schedule of proposed minimum prices as amended and submitted to the Commission by the District Board for District 20 should be revised by reducing the price on $\%_6$ " x 0" dust from \$1.70 to \$1.45, establishing a differential of 25 cents on 3/6" x 0" under 1" x 0".

> That the District Board for District

ties and sizes of coal produced within the district, classification of coal and price variations as to mines and consuming market areas.

That the District Board for District No. 20, as directed in Order No. 245 of the Commission, submitted to the Commission a schedule of such proposed minimum prices, together with the data upon which same were computed, including, but without limitation, the factors considered in determining the price relationships.

That the minimum prices proposed by the District Board for District No. 20, as herein modified, reflect, as nearly as possible, the relative market value of the various kinds, qualities, and sizes of coal produced within the district; are just and equitable as between producers within the district; have due regard to the interests of the consuming public; and do not permit dumping.

That the minimum prices proposed by the District Board for District 20 for any kind, quality, or size of coal for shipment into any consuming market area. as herein modified, are just and equitable between producers within the district.

That the minimum prices proposed by the District Board for District No. 20, as herein modified, yield a return per net ton for the district equal as nearly as may be to the weighted average of the total costs, per net ton, of the tonnage of Minimum Price Area No. 7, the Price Area in which District 20 is placed under the Act.

That the schedule of proposed minimum prices, as amended, and submitted to the Commission by the District Board for District No. 20, as amended, corrected, modified and revised as hereinabove set forth, conforms to Order No. 245 of the Commission and to the requirements of Section 4-II (a) of the Act, and as so amended, corrected, modified and revised, said schedule should be and the same is hereby approved by the Commission to serve as a basis for the coordination provided for in Section 4-II (b) of the Act. A copy of said schedule, as amended, corrected, revised and modified, appears in the Appendix for District No. 20.

APPENDIX FOR DISTRICT NO. 20

Schedule of Minimum Prices, As Modified and Approved, To Serve as a Basis for Coordination

Note.—The prices in this schedule are not the final prices that will be established on coal for shipment by Code Members within this district into consuming markets of this district. In the ultimate establishment of the effective minimum prices, pursuant to subsection (b) of Part II, Section 4 of the Act, the minimum prices in this schedule are subject to such increase or decrease reserves the contractive of part II. spectively, as may be necessary to carry out the provisions of subsections (a) and (b) of Part II, Section 4 of the Act.

> F. W. McCullough, Secretary.

TABLE OF CONTENTS

Code Members Instructions and Exceptions. Market Area Description. Prices. Size Groups. Sub-Districts.

PRICE INSTRUCTIONS AND EXCEPTIONS

Item No. 1.—The schedule of prices shown herein applies f. o. b. transportation facilities at mines on all coal produced by code members in the District shown on the title page hereof.

Item No. 2.—All prices are subject to the Marketing Rules and Regulations issued by the National Bituminous Coal Commission.

Item No. 3.—All size designations herein are for round hole screens, or their equivalent, except that sizes smaller than 15%" may be screened over other types of screens. When other types of screens are used the District Board shall determine the actual size designation of the coal so prepared with the approval of the Coal Commission.

Item No. 4.-In the sale of coal to destined points outside the boundary of the United States, prices stipulated herein are for payment in U.S. funds.

Item No. 5.—The prices listed herein are in cents per net ton of 2,000 pounds, f. o. b. transportation facilities at the mine.

Item No. 6.—When any size of coal is sold, in which the maximum top or bottom size exceeds the sizes scheduled, then such coal must be included in the next higher priced size group and priced ac-

Item No. 7.—When Coal is subjected to any oil, wax or chemical process, the following charges shall be made: Upon Size Groups Nos. 10, 11 and 12 a charge of 25 cents per ton shall be made; upon all other Size Groups a charge of 10 cents per ton shall be made.

Size Groups

Size	Lump, maximum	Double scr	eened sizes
No.	screen size	Maximum top size	Maximum bottom size
1 2 3 4 5 6 7 8 9 10 11 12 13	Lump. All lump over 8". All lump over 3". All lump over 194". Stove. Egg. Nut. Pea. Slack. Slack. Slack. Slack. Slack. Slack. Stack. Stack. Stack. Stack. Stack. Stack.	8" 8" 3" 196" 1" 156" 1"	8" 156" 156" 17" 34e" 0" 0" 0"
14 15	Mine run Mine run	8″ 3″	0" 0"

IDENTIFICATION OF SUB-DISTRICT NUMBERS Sub-District Number and Identification

1. Castlegate - Hiawatha.—All bitumi-Sevier and Sanpete Counties.

2. Cedar City.—All bituminous mines in Garfield, Kane, Iron and Washington Counties.

3. Coalville - Vernal. - All bituminous nous mines in Carbon, Emery, Grand, mines in Summit, Uintah, and Daggett Counties.

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Separately Shown

		·																
s			Sub-		P	rice	cla	ssii	ica	tio	ns e	and	l si	ze g	gro	up	N	os.
, -	Code member	Mine name	dist. No.	Seam or kind	1	2	3	4 8	6	1,	8	l.	1,0	J.,	12	13	14	15
t					-	_	-	- -	- -	- -	-	<u> </u> _	-	11		_	_	_
	Adair, Ira HAllen, Edgar	I Comfort	2 1	Not named	В	В	В	B	3 1	B	В			В		В	В	
0	Arronco, John Bailey Coal Co	Arronco Coal	.1	Castlegate D	Ā	Ā	Ā	à Z	À	À	Â		A	A	l	A A	Α	Λ
S	Baker & Nixon	Farrell	1	Hiawatha	A	A	A	A	\ A	A	A			A		A	A A	A
ul	Bell Bros. Coal Mine Campbell, H. C	Bell Brothers	1	Hiawatha	Ą	A	Ą	A A	A	A	A							
	I Carroll, Rulon J	Meeks Carroll	. 2	Upper Carmel	B	B	B	B	ŝ	B	B	-:	B	B		B	B	B
-	Case, M. F. Chesterfield Coal Co	Chesterfield	2 1	Not named	B	A	A	B I	S E	B	B	Ā	B	B	Ā	B	B	B
r	Christensen, Albert	Christensen 1 & 3. Edgewood	1	Castlegate A	A	A	Ą.	Ą	A	A	A		Ā	Ā		Ā	Ā	Ā
n s	Christopherson, M. W	Metcalf	1	Castlegate E	A	Â	Â	A	A	Ā	A		Â	Ä		A	A	A
S	Columbia Steel Co Comfort Coal Co	Comfort	1 1	Upper Carmel	A	A	A	A	A	A	A	A	A	A A	A	A	A	A
_	Costa, John Cowboy Coal Mine	Clear Creek	1	Ivie	A	A	A	A A	14	A	A		A	A		Ā	A	Ā.
е	Castle Valley Fuel Co	Otteson	1	Ferron L. Hiawatha. Gilson I Bed. Emery. Nelson. Castlegate A. Rock Canyon. Ferron A. Castlegate A. Mutual. Blind Canyon. Blind Canyon. Hiawatha. Castlegate D. Aberdeen	Â	Ā	Â.	A A	Ā	Â	A	[:	Â	A		Â	Â	A
е	Dods, Jack Duzett, E. H	Chidester #2 Browning	1	I Bed	A	A	A	A A	A	A	A	Ŀ	A	A		A	A	A
	Edwards, George Q Foy, L. V.	Otteson	1 1	Emery	A	A	Ą.	A A	A	A	A		Ā	Ā		Ā	Ā	Ā
0	Gibson, Emmet	Martin No. 3	î	Castlegate A	A	Â	Â.	A A	A	Â	A		Â	A		A	A	Ā
f	Grundvig, L. A Hansen, L. R	Grundvig Willow Spring	1	Rock Canyon	A	A	A A	A A	A	A	A		A	A		A	A	A
-	Hardscrabble Coal Co Hi-Heat Coal Co	Hardscrabble	1	Castlegate A	Ā	Ā	Ą.	A A	Ą	A	Ā		Ā	Ā		Ā	Ā	Ā
•	Howard, B. A	Deer Creek	1	Blind Canyon	A	A	A .	A A	A	A	A	_A	A	A	Α.	A	A	A
n	Howard, William Huntington Coal Assn	FreedCommunity	1	Blind Canyon	A	A	Al.	A A	A	A	A		A	A		A	A	A
š,	Independent Coal & Coke Company.	Aberdeen	1	Castlegate D	Ā	Ā	Ā	A A	Ā	Ā	Ā	Ã	Ā	Ā	A	Ä	Ä	Â
е	Jaggi, Ernest	Blue J Little Water	1	Aberdeen Bear Canyon	A	A	A.	A A	A	A	A		A	A		Al	Αl	A
	Jensen, Clarence Johnson, J. B	Blu J	3 1	Bear Canyon Not Named Bear Canyon Not Named	В	В	B	BE	B	B	B		В	B		B	В	В
S	Kidd, Alex C Killian, J. Frank	KiddOliphant #2	3	Not Named	B	В	В	ΒĒ	B	B	В		В	B		\mathbf{B}	B	В
	Klean Coal Co	Klean	1 2	Hiawatha Not Named Upper U. P Nelson	B	В	A B	A A B E	B	B	B		B	AB		AB	싊	AB
n	Klean-Heat Coal Co Lance, J. Reed	Monay Thompson Can-	1 1	Upper U. P	A	A	A.	A A	A	A	A		A	A		A A	A	A
t	Larson & Rigby	yon.		Ł	ιı			1	ı	1						- 1		
-	Leamaster, Martin Levanger, Chris	Mill Fork	-1 1	Castlegate A Black Canyon Upper Carmel Gordon Creek Hiswatha Ferron Gordon Creek Gordon Creek Blind Canyon Blind Canyon Gordon Creek Hiswatha Not Named Not Named Gordon Creek	A	A			A	A	A		A	A		A	A	A A
	Levanger, Chris Liberty Fuel Co	O. K Liberty	2 1	Upper Carmel	В	В	B	3 E	В	B	В		B	В		В	B	B
0	Lion Coal Corp Log Cabin Coal Co	Wattis	1	Hiawatha	Â	A	A	À	Â	A	A	A	A	A	A	A	A	A
е	MacLean Coal Company	MacLean	1	Gordon Creek	A	A	A A	A A	A	A	A	Ā	A	A	긃	A	쉬	A
1	Maple Creek Coal Co McKinnon, Malcolm N Munk, Leo D	Maple Creek American Fuel	1	Gordon Creek	Ā	Ā	A Z	Ā	Ā	Ä	Ā		Ã	Ä		Ä	Ā	Ã
е	Munk, Leo D	Stump Flat	1	Blind Canyon	A	Â.	A Z	À	Â	Â	A		A	Â		A	A	A
ו	Mutual Coal Co National Coal Co	National	1 1	Gordon Creek	A	A.	A	A	A	A	A	A	A	A	A	A	A	A.
S	Norgard, H. H. Parry, Chester	H. H. Norgard	3	Not Named	B	В	ΒĮį́	B	B	B	B		B	B		B	B	B
	Peerless Sales Co	Peerless	2 1	Gordon Creek	A	A	V V	A	A	A	A	Ā	A	A	Ā	B	B	B
	Ray, Lewis F. and Vern A. Rio Grande Coal Co	Rio Granda i	2 1															
	Royal Coal Co	Royal Arrowhead	1	Castlegate D	Ā	Â.	Ā	Ā	Ā	Ā	A	Ā	Â	Ā	Ā	Â	A	Ā
	Royal Coal Co Sanders, John F Sitterud, J. R	Oliphant	1	Gilson Castlegate D Castlegate A Hiawatha Gilson Rock Canyon	A	AI:	A Z	A	A	A	A		A	A		A	A	A
	Snow, Orrin L. Soldier Canyon Coal	Pace Canyon Soldier Canyon	1	Gilson Rock Canyon	Ā	A.	A Z	A	A	A	Ā	•	Ā	A		Ā	A	Ā
-	Company. Spring Canyon Coal Co					1			1			,	- 1	ŧ		- 1	1	
		Spring Canyon	1	Castlegate A Hiawatha			A Z								- 1	A	Δ	A
_	Standard Coal Co	Standard Straight Canyon	1	Hiawatha	A	A.	A Z	A	A	A	A	A	Ą	A	A	A.	A.	Ā
ı	Company. Sweet Coal Co. of Utah	Sweet		1 1			A Z											
- Į	Taylor, Moses C	Taylor Twin Cities Co-	1 3	Hiawatha Not Named Hiawatha	B	A B	BI	B	B	AB	AB	A	AB	AB	A	B	A B	A B
:	Twin Cities Cooperative	operative.	1										Ā	Ā		Λ	Ā	Ã
;	Twin Pine Coal Co United States Fuel Co	Twin Pine	- 3	Not Named	В	вļ	3 E	В	В	В	В	-,-	в	\mathbf{B}	_	в	в	B
۱:	Omited Branes Luci Co	King No. 1 King No. 2	1 1	Hiawatha Hiawatha Castlegate B	A	^ -	A A	A	A	A	A	Λ	4	A	A	A .	A.	A
,	Utah Fuel Company	Panther Castle Gate	1	Castlegate B		الم	۰											
۱,		Clear Creek	Î	Castlegate A	1	~ '	14	1	ı"	^		4	^	^	4	Α.	1	ris.
۱,	Webster, Ernest & Albert	Sunnyside. Webster and Nel-	2	Upper Sunnyside_ Lower Coal Creek.	в	вb	3 1	В	В	В	в	_	в	в		\mathbf{B}	в.	В
: [U. Nelson. Weeks, Nelson O	son. North Star	3	Not Named	- 1	- 1			1 1		- 1	- 1	В	- 1	- 1	В		
1	Woodward, Gerald	Martin No. 1	ĭ	Castlegate A	Ã.	à A	Á	Ā	Ã	Ä	Ă		A	Ă.		A.	A.	A
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Prices for Shipment Into Market Areas Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 oughly familiar with the marketing and and 14 distribution of coal within District No. 22

Price classi-			Pri	ces in	cents p	er net	ton of	2,000 p	ounds	and siz	e grou	p numl	oers		•
fication	'n	2	3	4	5	6	7	8	9	10	11	12	13	14	15
A	345 270	305 235	290 225	275 220	280 220	265 210	245 200	225 185	210 175	185 150	170 140	145	270 225	240 200	220 185

See "Price instructions and exceptions."

GEOGRAPHICAL DESCRIPTION OF CONSUMING MARKET AREAS TO WHICH PRICES APPLY

Area No. and Description

- 1. Utah.
- 2. Idaho.
- 3. Oregon.
- 4. Washington.
- 5. Montana.
- 6. Nevada.
- 7. California.
- 8. Kansas.
- 9. Nebraska.
- 10. Territory of Alaska.

11. Colorado: That portion lying north of a line extended west from Curecanti, Colorado, to the Colorado-Utah state line, and west of a line extended north from Curecanti through Slater, Colorado, to the Colorado-Wyoming state line.

12. Also that portion lying east of a line extended from a point on the Colorado-Wyoming state line south of Carpenter, Wyoming, south to Pueblo, Colorado, and north of a line extended southeast from Pueblo just south of, and parallel to the Atchison, Topeka & Santa Fe Railroad to the Colorado-Kansas state line.

13. South Dakota: That portion lying west of the Missouri River and south of a line drawn east and west just north of Newell, South Dakota.

14. Iowa: That portion lying west of a line beginning at the Iowa-Minnesota state line north of Ocheyedan, Iowa, and extended south through Ocheyedan and Hamburg, Iowa, to the Iowa-Missouri state line.

MINIMUM PRICE AREA NO. 9—DISTRICT NO. 22

PROPOSED MINIMUM PRICES

District Board No. 22 prepared a schedule of proposed minimum prices for the kinds, qualities and sizes of coal produced within the District, which was, in the best judgment of the District Board, a compliance with Commission's Order No. 245. It then transmitted a copy of these proposed prices to each code member within the District. Five protests were filed with the District Board by code members within the District. Thereafter, the District Board filed a copy of the schedule of proposed prices, together with the data upon which it was computed with the Commission, which schedule of proposed minimum prices was received in evidence as Exhibit No. 160.

The code members who filed protests to the schedule of proposed prices were: Arthur Mills, Fred Nies, Whittle Brothers, Otto Pust and A. C. Elder. The District Board, after receiving these protests, held two meetings; one on August 23, 1938, and the other on September 3, 1938, to consider and determine what action, if any, should be taken in regard to the protests. The protest of A. C. Elder was in effect withdrawn by him; that of Otto Pust was tabled pending the decision of the Commission in regard to his application for exemption from the Bituminous Coal Act on the ground that he is producing lignite coal and does not come within the Act. The action of the Board on the other protests which were filed and heard is embodied in a resolution adopted by the District Board at a meeting held on September 10, 1938, which resolution was received in evidence as Exhibit No. 161. The protest of Fred Nies was denied by the District Board, because, in the opinion of the Board, there was no difference in the quality of his coal as compared with other coals in the same grouping. The District Board in its resolution (Exhibit No. 161) recommended that the price schedule be modified as to Arthur Mills on certain size groups, because the Board had been misinformed as to the seam of coal worked by Mills. The Board found that the seam in which he was working carried a higher moisture content and that the coal was inferior to other coals within the Roundup sub-District. The protest of Whittle Brothers was granted by the District Board because the Board found on investigation that the seam of coal mined by Whittle Brothers was of a lower grade than the Roundup seam and had an ash content greatly in excess of the Roundup seam, making the marketability very much inferior.

The District Board recommended that the proposed schedule of minimum prices (Exhibit No. 160) be amended as set out in two resolutions, one adopted by District Board in a meeting held September 10, 1938, and the other at a meeting held by the District Board on September 13, 1938, which resolutions were received in evidence as Exhibits Nos. 162 and 163.

Testimony in support of the schedule of proposed minimum prices proposed by District Board No. 22 was adduced by an expert witness, to wit: The Vice-Chairman of the District Board, who was thor-

distribution of coal within District No. 22. The witness has been engaged in the mining of coal practically all of his life, holding various positions in and around the mine from foreman to mine manager. He has resided in Montana for the past fourteen years, during which time he has been assistant manager or general manager of the coal operations of the Anaconda Copper Mining Company, and has been in charge of the production and marketing of coals produced by that Company. He has had many years' experience in the marketing of coals produced in Utah, Wyoming, Oregon and Montana. His knowledge of the coals in District No. 22 was based on years of experience in that District.

It appears that the District Board consists of seven members, each of whom. with the exception of a labor member, is an operator and is in charge of the production and marketing of coal for an operating company in the State of Montana. All of these seven members took an active part in the preparation of the proposed schedule of minimum prices. This Board represents approximately eighty per cent of the commercial tonnage in District 22. The members of this Board are all men who, by reason of their intimate knowledge of their own coals and their familiarity with their competitors' coals, are fully capable of judging the price differentials and relationships between the kinds, qualities and sizes of coal produced within District No. 22.

The schedule of minimum prices proposed by District No. 22, as set out in Exhibit No. 160, divides the District into twelve sub-Districts as follows:

Sub-District Number and Description

- 1. Roundup.—All mines operating in the Roundup and Carpenter Creek Seams in Musselshell County, north of Klein, and all mines operating in the Painted Robe and Franklin Seams in Golden Valley and Yellowstone Counties.
- 2. Red Lodge.—All mines in Carbon and Stillwater Counties.
- 3. Rosebud.—All mines in Custer, Rosebud, Big Horn, Garfield, Powder River, McCone and Prairie Counties.
- 4. Lewistown.—All mines in Fergus County.
- 5. Great Falls No. 2.—All mines in Judith Basin County except the mines in the Belt Creek Seam in Judith Basin County.
- 6. Trail Creek.—All mines in Park and Gallatin Counties.
- 7. Great Falls No. 1.—All mines in Cascade and Chouteau Counties, including the mines in the Belt Creek Seam in Judith Basin County.
- 8. Havre.—All mines in Hill, Blaine and Phillips Counties.
- 9. Bull Mountain.—All mines in Musselshell, Treasure, and Yellowstone Counties, except the Roundup Sub-District.

10. Plentywood No. 1.—All mines in Opheim and Glentana Fields in Valley County, Wolf Point Field in Roosevelt County, and Scobey Field in Daniels County.

11. Plentywood No. 2.—All mines in Dawson, Valley, Sheridan, Richland, Roosevelt and Daniels Counties, except Plentywood No. 10 Sub-District.

12. Valier.—All mines in Pondera, Teton, Glacier, Toole and Flathead Counties.

These sub-Districts were determined by the coal deposits in the State and represent all of the different producing areas within the State. These sub-Districts have been generally known by these names for a long number of years. and they are recognized by producers in the District as the natural geographical coal-producing areas. The total tonnage produced in the year 1937 in these sub-districts was 2,900,000 tons. Of that amount approximately 2,000,000 tons were controlled tonnage and the balance was commercial tonnage. Of this commercial tonnage approximately 235,000 tons were used by public utilities; cement plants and sugar beet factories. The remainder was used for domestic purposes and small steam plants.

The coals produced in the twelve sub-Districts of District No. 22 are described as follows:

Subdistrict No. 1.—The coal of this sub-District is subbituminous, it is bright in color, is reasonably free from impurities, and is free burning. All of these coals, with one or two exceptions, in this sub-District are comparable, and have been classified accordingly in the proposed price schedule.

Subdistrict No. 2.—The coals in this sub-District are similar in quality to the coals produced in sub-District No. 1. The same classification exists, except on four groupings. These exceptions are due to the fact that these sizes contain more impurities than the same sizes in sub-District No. 1.

Subdistrict No. 3.—The coals in this sub-District are subbituminous, bordering on lignite; their excessive moisture retards their burning ability. The coal degrades rapidly after being mined. Because of the non-storing characteristics of this coal, it is obvious that it must be utilized soon after it is mined.

Subdistrict No. 4.—The coals in the Lewistown Field of this sub-District are bituminous in character, quite firm in structure, handle and store with small amount of degradation. The seam is from $3\frac{1}{2}$ to 4 feet in thickness. The coal is relatively free from impurities, and has good burning qualities. In the Winifred Field of this sub-district, the coal is of inferior quality as compared with the Lewistown Field.

Subdistrict No. 5.—This is low grade bituminous coal. The market for it is limited to a sparsely settled part of the State at or near the mines.

Subdistrict No. 6.—The coal in the Chestnut and Timberline Fields is of good quality. Some of it will coke. The coal in the Trail Creek Field of this sub-District is of inferior quality to the Chestnut and Timberline Fields, because of its fracture and friability.

Subdistrict No. 7.—Several seams of coal are being worked in this sub-District. The coal is of a low rank bituminous. The coal in color is black to a grayish-black. The various seams contain considerable impurities. The commercial sizes undergo expensive preparation process to remove the impurities.

Subdistrict No. 8.—The coal in this sub-district is subbituminous. The Havre and Goldstone Fields of this sub-District contain a lower grade of coal than the adjoining sub-Districts, and this is reflected in lower prices. The Chinook Field, the other field in this sub-District, produces a fair quality of bituminous coal. It is of a better grade than the Havre and Goldstone Fields, better prepared, and has a better appearance. These elements are reflected in the prices proposed for this coal.

Subdistrict No. 9.—This sub-District adjoins sub-District No. 1, and the coals are somewhat similar except that they contain more moisture and degrade more rapidly in storage.

Subdistrict Nos. 10 and 11.—A proceeding is pending before the Commission to determine whether the coal in this sub-District is lignite, as lignite is defined in the Act. Pending a decision by the Commission the Board proposed the same prices for this sub-District as were established in 1937.

Subdistrict No. 12.—The coal in Pondera and Toole Counties is a good grade of bituminous coal, but the seam is thin, being less than 30 inches in thickness, and contains bone partings. The mines in the District are located in a sparsely settled region and are wholly dependent on local markets, which markets are not sufficient to absorb all of the smaller sizes produced, with very little outlet for the smaller sizes. Flathead County has only one code member. The coal is subbituminous, with a high moisture content.

The Exhibits received in evidence are as follows:

Exhibit No. 160.—"Schedule of proposed minimum prices of District No. 22 pursuant to Order No. 245."

Exhibit No. 161.—"Resolution adopted at meeting of District Board No. 22 on protest of Arthur Mills, Fred Nies, Whittle Bros., and Alex Landice."

Exhibit No. 162.—"Resolution adopted at meeting of District Board No. 22 on revisions to be made in the schedule of proposed prices."

Exhibit No. 163.—"Resolution adopted at meeting of District Board No. 22 that prices for controlled tonnage as they appear in the proposed schedule of minimum prices be revised."

Exhibit No. 164.—"Tabulation Showing Tonnage and Realization Distribution in District No. 22 Based on 1937 Tonnage Using Proposed Minimum Prices."

Exhibit No. 194.—"Marketing Rules and Regulations, Incidental to the Sale and Distribution of Coals of Code Members within District No. 22."

The evidence shows that the schedule of minimum prices submitted by District Board No. 22 (Exhibit No. 160) as amended, proposes minimum prices f. o. b. transportation facilities at the mine for the various kinds, qualities and sizes of coal produced by code members in the District.

District Board No. 22, as shown by its Exhibit No. 162, proposes fourteen size groups ranging from Size Group No. 1. lump coal 6 inch and over, to Size Group No. 14, railroad mine run. These size groups are the outgrowth of dealer and consumer demand over a period of years, and represent the best judgment of the Board. They have been established as a result of marketing experience. Sizes having the same relative value according to sub-districts were grouped together by the Board under a letter classification. since they took the same price. The price variations between the various size groups were considered by the Board to be proper. In the opinion of the expert witness for the Board, they satisfy the requirements of the consumer and preserve, as nearly as possible, the normal production and distribution of the various sizes in accordance with the requirements of the consumer.

The evidence shows that District Board No. 22, in proposing these f. o. b. mine prices set forth in the schedule, first took the commercial tonnage. It determined the relative value one to the other of the various kinds and qualities of coal within the District, and the relative values one to the other of the various sizes of such coal, this determination being based upon the knowledge of the members of the Board, who were all experienced coal men, and their familiarity with the marketability of the coals in the District. As a starting point, the Board took the prevailing price for 2" lump from sub-Districts Nos. 1 and 2. It determined the proposed minimum prices of the other kinds, qualities and sizes of coal by relating them to that base, taking into consideration the differentials which had previously been determined. They then multiplied the tonnage of each of the kinds, qualities and sizes which were found to have been sold in the year 1937, by prices applicable to such coal, and arrived at the potential realization for the commercial coal on that basis. This realization was somewhat above the known weighted average cost of the commercial tonnage of $$2.28\frac{1}{2}$, as determined by the Commission. They then adjusted the price in a sufficient amount to be near that figure. At that time the Board was of the opinion that the minimum prices

for the controlled tonnage should be return for the District equal as nearly proposed on the basis of its cost of production, and accordingly, it added to the sum of money which should be realized from the sale of commercial coal a sum which would be realized from the sale of the controlled coal on the basis of its cost of production for the year 1937. The result of this computation was the weighted average realization of \$1.53 plus per net ton for all of the coal sold from District 22 for the year 1937.

After the Board had submitted the proposed minimum price schedule, it was advised that minimum prices for controlled coal must be proposed on the same basis as commercial coal, also that the prices proposed must yield a realization as near as may be to the figure which the Commission had determined as the weighted average cost of all the coal produced in Price Area No. 9 for the year 1937, namely, \$1.59 per ton. Thereafter, the Board recomputed the realization for the controlled coal, applying to the controlled tonnage produced during the year 1937 the revised proposed minimum prices for this coal. It then weighted the new realization from the controlled tonnage with the realization which it had determined from the commercial tonnage. The District Board recommended that the prices set out in the original price schedule (Exhibit No. 160) be amended so as to conform to the changes for controlled tonnage contained in Exhibit No. 163.

From the evidence it appears that coals in the various sub-Districts in District No. 22 were grouped by the Board in letter classifications according to their relative value. The letters are indices to the prices in each size group. The letter "A" represents the highest priced coal in each size group. The letter classification for each mine is set forth on pages 6 to 6-j, inclusive, of Exhibit No. 160.

In determining the price relationships set up in the proposed minimum price schedule as amended, the evidence shows that analyses played a very small part in the price relationship, because coals sold in District 22 are seldom sold on an analysis basis.

It appears from the evidence that the market areas, as set out in the proposed schedule of minimum prices (Exhibit No. 160), as amended, were determined by the sale of Montana coal into these territories over a period of a great many years. These market areas represent the natural markets. Practically all of the controlled tonnage is sold within the State of Montana. As to the commercial tonnage, about eighty per cent of the entire production is consumed within the State, and the remainder is shipped into the following markets named in the order of their importance: North and South Dakota, Washington, Idaho, Minnesota, eastern Oregon, Wyoming and

The evidence shows that the schedule of proposed minimum prices, as amended by District Board No. 22, will yield a a s follows:

as may be to the weighted average cost of the total cost per net ton of the tonnage of minimum Price Area No. 9 as determined by the Commission, namely, \$1.59 per ton. The realization submitted will yield \$1.60 per ton, being a difference of one cent per ton.

It appears from the evidence that the differentials shown on the proposed price schedule, as amended, correctly reflect the relative market value of the various kinds, qualities and sizes of coal to which they are applicable.

The expert witness for the District Board testified that the price classifications and price differentials reflected in the proposed schedule of minimum prices, as amended, were, in his judgment and in the judgment of the District Board, equitable as between code members in the District, and gave due regard to the interest of the consuming public. The evidence shows that the members of the District Board, before proposing such schedule of minimum prices, gave serious consideration to all of the factors in determining what they deem the proper relationship between the coals of the mines in the District. Every producer in the District had the opportunity to protest the proposed schedule. Except for the five protests heretofore mentioned, none of the code members protested to the price classifications and price relationships. The differentials between the proposed prices have in the main existed over a period of many years, and have proved acceptable to the consuming public. The consumers in the past have had a choice of any size of coal that would be suitable to their needs and have paid approximately the same differentials between the sizes.

The schedule of proposed prices, as amended, does not show any price variation due to seasonal demand. It was the opinion of the District Board that seasonal demand should have no effect on the prices in District No. 22. And neither do they show any price variation occasioned by value as to uses. This is due to the fact that the coals from District No. 22 are all-purpose coals.

In the opinion of the witness, the proposed prices do not permit dumping, for the reason that the prices proposed are fair, with fair differentials between the various kinds, qualities and sizes of coals produced in the District.

In order to make the price schedule proposed by District Board No. 22 (Exhibit No. 160) conform to the recommendations of the District Board contained in Exhibit Nos. 161, 162 and 163, and to conform to the evidence given in support of these Exhibits, the Commission finds that the proposed price schedule should be corrected modified and amended in the following respects, to-wit:

Item 1, page 3 thereof, which reads

"Prices listed herein are per net ton of 2.000 pounds f. o. b. transportation facilities at the mine."

should be deleted, and the following language should be inserted in lieu thereof:

"The prices listed herein are in cents per net ton of 2,000 pounds f. o. b. transportation facilities at the mine."

The Commission finds that page 3 should be amended so as to include Item 4, which will read as follows:

"When any size coal is sold in which the maximum top or bottom size exceeds the size scheduled, then such coal must be included in the next higher priced size group and priced accordingly."

Page 3 should be amended so as to include Item 5, which reads as follows:

"All size designations herein are for round hole screens or their equivalent. When other types of screen are used, the District Board shall determine the actual size designation of the coal so prepared. with the approval of the Coal Commission."

The Commission finds that page 4 should be deleted.

The Commission finds that page 4-A should be amended and corrected in the following respects:

The two paragraphs at the bottom of the page should be deleted. Said paragraphs read as follows:

"When any size of coal is sold, in which the maximum top or bottom size exceeds the size scheduled above, then such coal must be included in the next higher size group and priced accordingly."

"(a) All maximum screen sizes mentioned herein are based on round hole or the equivalent thereof."

Delete "(a)" at the head of "Maximum top sizes" and "Maximum bottom sizes."

The words "Fancy Lump over 6", 7", 8" and 9", under Side Group 1, should be deleted, and the following language inserted in lieu thereof: "Lump 6" and over."

The words "Standard Lump over 2"" appearing under Size Group 2, should be deleted and the following language inserted in lieu thereof: "2" Lump."

Size Group 9, which reads: "Stoker maximum top size 11/4"" should be amended to read: "Stoker maximum top size 11/4", maximum bottom size 1/2"".

Page 5 should be corrected and amended as follows: sub-District No. 5 should be amended to read as follows:

"Great Falls No. 2.—All mines in Judith Basin County except the mines in the Belt Creek Seam in Judith Basin County."

Sub-District No. 7 should be amended to read as follows:

"Great Falls No. 1.-All mines in Cascade and Chouteau County, including the mines in the Belt Creek seam in Judith Basin County."

Sub-District No. 10 should amended to read:

"Plentywood No. 1.-All mines in Opheim and Glentana Fields in Valley County, Wolf Point Field in Roosevelt County, and Scobey Field in Daniels County."

Sub-District No. 11 should be amended to read:

"Plentywood No. 2.-All mines in Dawson Valley, Sheridan, Richland, Roosevelt, and Daniels County, except Plentywood No. 10 Sub-District."

The Commission finds that on pages 6 to 6-j inclusive, (Exhibit No. 160) wherever the seam or kind is designated "unknown", that the word "unknown" should be deleted, and the word "unnamed" should be inserted in lieu thereof.

The Commission finds that the price classification for Arthur Mills, as contained on page 6-f should be amended so that the same will read:

Size group:	Classification
2	G
5	C
	B
	C
11	C
12	В

The Commission finds from the evidence that the price classification for Alex Landice, page 6-e, should be amended to read as follows:

Size group: Classificat	ion
1 I)
2 H	I-1
3 1	A
5 1	E
7 1	3
8 1	A

Size group:	Classificat	101
9	I	0
11	I	Ō
19	1	Q.

The Commission finds that the price classification for Whittle Brothers on page 6-i should be amended so as to read:

lize group:	Classification
1	D
2	H-
	A
	E
	В
	A
	D
	A
	D
14	В

The Commission finds from the evidence that the price schedule (Exhibit No. 160) page 7, should be amended so as to show a price classification "H-1." and the price under that classification in size group 2 should be "300."

The Commission finds that the proposed price schedule, pages 6 to 6-j, inclusive, should be amended in such a way as to put all of the code members in their alphabetical order.

The Commission finds that page 6-g, wherein it shows the price classifications and size groups for Roundup Coal Mining Company, should be amended so as to place an "A" classification under Size Group 14.

The Commission finds that page 6-c (Exhibit No. 160), wherein the price classification and size groups for Eagle Coal Company are set out, should be amended so as to put an "A" classification in Size Group 13, and an "A" classification in Size Group 14.

The Commission finds that pages 6 to 6-j, inclusive, (Exhibit No. 160) should be amended so as to add in their proper alphabetical order the names of the following code members and their classification:

	i	Sub-		Price classifications and size group													
Code member	Mine name	dist. No.	Seam or kind		2	3	4	5	6	7	8	9	10	11	12	13	14
Erickson, Carl	Skaggs Kent	7 7 7 8 7 1 4 7 2 2 2	do do do	A B B B B B	DOEEDEEE	B A B A	AAA	B A B B	A	A B	B A B B		A A A	BBBC ;BCC	A B A B B		

The Commission finds that page 7 (Exhibit No. 160), wherein it reads as follows:

"Price Classification A, Size Group 14,

"Price Classification B, Size Group 14,

"Price Classification C, Size Group 14,

should be amended and changed to read as follows:

"Price Classification A, Size Group 14,

"Price Classification B, Size Group 14,

"Price Classification C, Size Group 14, 110."

And now upon the record herein, upon

otherwise, and upon the above and foregoing facts found to exist, the Commission finds:

That the District Board for District No. 22 as directed in Order No. 245 of the Commission, proposed minimum prices free on board transportation facilities at the mines for kinds, qualities and sizes of coal produced within the district, classification of coal and price variations as to mines and consuming market areas.

That the District Board for District No. 22, as directed in Order No. 245 of the Commission, submitted to the Commission a schedule of such proposed minimum prices, together with the data upon which same were computed, including, but without limitation, the factors considered in determining the price relationships.

That the minimum prices proposed by the District Board for District No. 22, as herein modified, reflect, as nearly as possible, the relative market value of the various kinds, qualities, and sizes of coal produced within the district; are just and equitable as between producers within the district; have due regard to the interests of the consuming public; and do not permit dumping.

That the minimum prices proposed by the District Boad for District 22 for any kind, quality or size of coal for shipment into any consuming market area, as herein modified, are just and equitable between producers within the district.

That the minimum prices proposed by the District Board for District No. 22, as herein modified, yield a return per net ton for the district equal as nearly as may be to the weighted average of the total costs, per net ton, of the tonnage of Minimum Price Area No. 9, the Price Area in which District 22 is placed under the Act.

That the schedule of proposed minimum prices, as amended, and submitted to the Commission by the District Board for District No. 22, as amended, corrected, modified and revised as hereinabove set forth, conforms to Order No. 245 of the Commission and to the requirements of Section 4-II (a) of the Act and as so amended, corrected, modifled and revised, said schedule should be and the same is hereby approved by the Commission to serve as a basis for the coordination provided for in Section 4-II (b) of the Act. A copy of said schedule as amended, corrected, revised and modified appears in the Appendix for District No. 22.

APPENDIX FOR DISTRICT NO. 22

Schedule of Minimum Prices, as Modified and Approved, to Serve as a Basis for Coordination

Note.—The prices in this schedule are not. the final prices that will be established on coal for shipment by Code Members within this district into consuming markets of this district. In the ultimate establishment of the effective minimum prices, pursuant to And now upon the record herein, upon subsection (b) of Part II, Section 4 of the the evidence, both documentary and Act, the minimum prices in this schedule are

subject to such increase or decrease respectively, as may be necessary to carry out the provisions of subsections (a) and (b) of Part II, Section 4 of the Act.

> F. W. McCullough, Secretary.

Issued: December 9, 1938.

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Price Instructions and Exceptions. Size Groups Identification of Sub-District Numbers.

Code Members and Schedules. Prices.

Geographical Description of Consuming Market Area to which Coal Produced in District No. 22 is shipped.

PRICE INSTRUCTIONS AND EXCEPTIONS

Item No. 1.—Prices listed herein are in cents per net ton of 2,000 lbs. f. o. b. transportation facilities at the mine.

Item No. 2.—All prices are subject to the Marketing Rules and Regulations issued by the National Bituminous Coal Commission.

Item No. 3.—When coal is subjected to any chemical, oil, or waxing process, an additional charge of not less than 25 cents per net ton shall be made.

Item No. 4.-When any size of coal is sold, in which the maximum top or bottom size exceeds the sizes scheduled, then such coal must be included in the next higher priced size group and priced accordingly.

Item No. 5.—All size designations herein are for round hole screens, or their equivalent. When other types of screens are used, the District Board shall determine the actual size designation of the coal so prepared, with the approval of the Coal Commission.

Size Groups

		Double siz	screened es
Size group No.	Lump, maximum screen size	Maxi- mum top size	Maxi- mum bottom size
1 2 3 4 5 6 7 8 9 10 11 12 13	6" Lump and over	9" 6" 6" 3" 2" 1¼" 1¼" 1,4"	6" 3" 2" 1¼" 1" 5" 0" 0" 0"

IDENTIFICATION OF SUB-DISTRICT NUMBERS

Subdistrict No. and Identification

- 1. Roundup.—All mines operating in the Roundup and Carpenter Creek Seams in Musselshell County, north of Klein, and all mines operating in the Painted Robe and Franklin Seams in Golden Valley and Yellowstone Counties.
- 2. Red Lodge.—All mines in Carbon and Stillwater Counties.
- 3. Rosebud.—All mines in Custer, Rosebud, Big Horn, Garfield, Powder River, McCone, and Prairie Counties.

- County.
- 5. Great Falls No. 2 .- All mines in Judith Basin County except the mines in the Belt Creek Seam in Judith Basin
- 6. Trail Creek .-- All mines in Park and Gallatin Counties.
- 7. Great Falls No. 1.-All mines in Cascade and Chouteau Counties, including the mines in the Belt Creek Seam in Judith Basin County.
- 8. Havre.—All mines in Hill. Blaine and Phillips Counties.
- 9. Bull Mountain.—All mines in Musselshell, Treasure, and Yellowstone Counties.

4. Lewistown.—All mines in Fergus, Counties, except the Roundup Sub-District.

- 10. Plentywood No. 1.-All mines in Opheim and Glentana Fields in Valley County, Wolf Point Field in Roosevelt County, and Scobey Field in Daniels
- 11. Plentywood No. 2.—All mines in Dawson, Valley, Sheridan, Richland, Roosevelt, and Daniels Counties, except Plentywood No. 10 Sub-District.
- 12. Valier .- All mines in Pondera, Teton, Glacier, Toole and Flathead

Alphabetical List of Code Members Showing Price Classification by Sizes for all Uses Except as Separately Shown

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Anderson Coal Co. Anderson, E. M. Anderson, W. C. Anno, Walter Bair-Collins Co. Baron, C. W. Bearcreek Coal Co. Berkley Coal Co. Verten, Ben Big Four Mining Co. Black Diamond Coal Co. Black Diamond Mine Black Widow Mine.			Unnamed	В	E	$ \mathbf{B} $	A	В	A	A	В	D			Α.		
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Alphabetical List of Code Members Showing Price Classification by Sizes for all Alphabetical List of Code Members Showing Price Classification by Sizes for all Uses Except as Separately Shown—Continued

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Seam or kind

Sub-dis-trict No.

Unnamed.....

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Sand Coulee Bridger Belt Creek Unnamed Bean No. 1 Bed No. 1 Unnamed Franklin Franklin E. Coundup.

Red Lodge
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Sand Coulee
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Price classifications and size group Nos.

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MARKET AREA TO WHICH COAL PRODUCED IN DISTRICT 22 IS SHIPPED

Shipments of coal originating in District No. 22 are made to points in Montana, Idaho, eastern Oregon, and Washington as far west generally as the Columbia River; also shipments easterly, are made to points in North Dakota. South Dakota, Minnesota, Iowa, and Wyoming.

PRICE AREA NUMBER 10-DISTRICT 23 PROPOSED MINIMUM PRICES

In compliance with Order No. 245 of the Commission, the District Board for District No. 23 transmitted Order No. 245 to a standing committee, composed of long experienced coal operators and principal coal salesmen thoroughly familiar with the production and distribution of coal within District No. 23, including each of the sub-districts. This standing committee after careful compilations and consideration prepared a tentative schedule showing sub-districts, classifications of coal, sizes of coal and price relationships. This schedule was then presented to the District Board for District No. 23.

Upon receipt of said tentative schedule. the District Board for District 23 duly considered same and after revising and amending same in such manner as it deemed advisable, said District Board transmitted copies of same to each and every code member within the District.

The District Board for District 23 requested each of the code members within District 23 to study carefully said schedule and invited them to attend a formal hearing to be held by the District Board on August 15, 1938, at which hearing protests, objections, or suggestions relative to said schedule would be received. The District Board convened on said date and duly opened said hearing. Said hearing lasted four days and practically every code member of the State of Washington and representatives from Oregon and Alaska were present. At the close of said hearing after various inconsistencies in the tentative schedule had been pointed out, considered and passed upon, the District Board for District No. 23 unanimously approved a schedule of proposed minimum prices to be submitted to the Commission, all code members present apparently being in complete accord.

The District Board for District No. 23 submitted said schedule of proposed minimum prices, together with the data upon which same were computed, to the Commission. Said schedule appears in the record as Exhibit No. 183.

Subsequent to the submission of said schedule to the Commission by the District Board for District No. 23, certain changes as to the form of said schedule were deemed advisable. These changes were merely formal in nature for the most part and were deemed advisable to

Board for District No. 23 was called to be held September 12, 1938, at which meeting said changes and revisions were approved. The original schedule was redrafted to incorporate said changes together with revisions as to three price relationship items. Copies of said revised schedule were transmitted to all the code members within the District, same having been officially approved for submission to the Commission. Said revised schedule of minimum prices as proposed to the Commission by the District Board for District No. 23 appears in the record as Exhibit 184.

Testimony in support of minimum prices proposed by District Board No. 23 was adduced by an expert witness. namely, a member of the District Board. who was thoroughly familiar with the marketing and distribution of coals in District No. 23. His knowledge of the coals in said District was based upon years of experience in the District. It appears that the members of the District Board of District No. 23 are all experienced coal men, familiar with producing and marketing coal in said District.

At the meetings of the District Board for District No. 23 held for the purpose of proposing minimum prices, approximately 95% of the tonnage produced in District No. 23 was represented.

The revised schedule of proposed minimum prices (Exhibit 184) as submitted to the Commission by the District Board for District No. 23 differs from the original schedule (Exhibit 183) in that the Oregon and Alaska mines are included in the alphabetical size and price list of the members of the entire district. In the original schedule, the Oregon and Alaska mines were reported separately. In addition to the above, the revised schedule differs from the original schedule in that the various sizes of coals have been regrouped and consolidated, the revised schedule providing for twenty-six size groups, whereas in the original schedule forty size groups were provided. Such regrouping of the size groups in said revised schedule was, in the opinion of the District Board for District No. 23, more practical, allowing less change of misunderstanding and dispute, each group having been given specific maximum top and bottom size designations with no tolerance variations permitted.

The revised schedule contains a new set of letters representing the price relationships. This new set of letters was made necessary through bringing the Oregon and Alaska code members into the alphabetical list and through consolidating the sizes as set out above.

The changes appearing in the revised schedule have not effected any change in the price relationships, or prices, appearing in the original schedule with these exceptions. A slight inconsistency was found in the relationship of one price in the Bellingham, or "D" subbe made for purposes of uniformity and district and one in the Cumberland, or prices did not properly reflect the dif-

GEOGRAPHICAL DESCRIPTION OF CONSUMING Clarification. A meeting of the District | "G" sub-district. One price in the Southwest, or "C" sub-district was overlooked in the original schedule. The above inconsistencies in the original schedule have been appropriately changed in the revised schedule and the prices overlooked have been added in the revised schedule.

> The revised schedule also reflects a change in realization. At the time the original schedule of proposed prices was drawn up, the District Board for District No. 23 did not understand that the prices proposed should yield a return per net ton for the District equal as nearly as may be to the weighted average of the total costs, per net ton, of the tonnage of Minimum Price Area No. 10, the price area in which District 23 is placed under the Act. Upon reexamination of the involved tonnage of District No. 23, the District Board for District No. 23 found that five cents per ton should be added to each individual price in the original schedule to effect the above. Such addition was agreeable to the code members within the District and was unanimously approved by the District Board. The prices appearing in the revised schedule show this revision and the prices appearing in the revised schedule result in a weighted average realization in substantial conformance to the weighted average cost of Minimum Price Area No. 10.

> The District Board for District No. 23 in revising its original schedule, made no changes in price differentials or relationships applicable to Oregon or Alaska coals and the method of including the prices applicable to coals for code members in Oregon and Alaska in the revised schedule was approved by the representatives of code members in Oregon and Alaska.

> The changes appearing in the revised schedule as made in the Bellingham, or "D" sub-district group, the Cumberland. or "G" sub-district group, and the Southwest, or "C" sub-district group, were as follows:

In the original schedule in its Size Group 6, " $3\frac{1}{4}$ x $1\frac{3}{4}$ nut," the Bellingham sub-district "D" mines were given a price of \$4.50 per net ton. In Size Group 5, "334 x 134 nut," coals of those mines were given a price of \$4.25 per net ton. The price relationship so proposed was obviously a mistake since the sizes of those coals were competitively comparable and should take the same price classification. Hence, the schedule was revised so as to give the price of \$4.30 to each size group.

In the original schedule Size Group 8, "234 x 15% nut." the Cumberland subdistrict "G" mines were given a price of \$4.00 per net ton. In Size Group 13, "plus 34-inch steam" and Size Group 9. "31/4 x 1 steam," the same mines were given a higher price of \$4.25 per ton. The District Board believed that such

ferential in values of the coals in those | States. No single field, or sub-district, | This realization is equal as nearly as size groups and that the price proposed has an unusual number of sizes within on those coals in Size Group 8 should be raised to \$4.30 per net ton, hence, the revision.

In the revised schedule, the mines of Southwest Washington, sub-district "C" are placed at a price relationship of \$2.40 on "15% x 1/4" special pea coal produced in said district. Such sub-district is small and detached, having small mines and strictly local markets and coming into but little contact with any of the coals from the other sub-districts of the state. The price relationship on the size referred to is consistent with the local marketing problems.

The above and foregoing changes are in line with other price relationships on the revised schedule. The addition of five cents to each of the prices proposed on the original schedule did not affect the price relationships as set forth in the original schedule but merely resulted in proposed prices which more nearly equalled the weighted average cost of production of the coals produced in Minimum Price Area 10 as that cost had been determined by the Commission.

The original schedule of proposed minimum prices as submitted to the Commission by the District Board for District No. 23 provided for forty sizes. These forty sizes represent the separate sizes and kinds of coals that are regularly, or at times during a normal year, produced and sold by one or more of the mines in the District. In the revised schedule twenty-six sizes are provided. The District Board believes that this number of sizes represents the minimum to which sizes of coals in District No. 23 could be reduced by groups which would include sizes of comparable value. If the sizes were further reduced, certain operators within the District would be prevented from continuing the production and sale of sizes of coals for which a legitimate market had been established and which certain consumers desired to continue to purchase.

The re-grouping and consolidation of sizes into twenty-six (26) size groups, as shown in the revised schedule, does not prevent the production and sale within the size limits set for those groups of the sizes and kinds of coals that were provided in the original forty size groups. To further reduce the number of size groups was deemed impractical since such would necessitate unwarranted physical changes and would more than likely subject many code members to tonnage losses in their markets which would result in upsetting long-standing relationships in the industry. Twentysix sizes of coals in District No. 23 is not abnormal. The small tonnage area in said District is composed of the two far distant coal fields of Oregon and Alaska. In Washington there are seven separate and distinct fields as different in mining conditions and coal characteristics as if they were located in widely

itself. It was the judgment of the members of the District Board for District No. 23 that twenty-six size groups for the District would be sufficient to equitably cover its needs and that a less number than twenty-six sizes would cause irregularities and perhaps result in some injustices.

The realization resulting from the minimum prices proposed by the District Board for District No. 23 was determined in this manner. A study of the 1936 and 1937 tonnages produced at and sold from the various mines in the district showed clearly that the record of those years would not necessarily reflect the current market conditions prevailing in the district. The District Board for District No. 23, after consultation with practical men from each of the fields, decided to construct a readjusted year based upon 1937. Knowledge of changes that had taken place and were taking place in the fundamental items of marketing, as well as knowledge of normal seasonal fluctuations, prompted such decision. Such a year in the belief of the District Board for District No. 23 would be representative of a normal year of production and distribution in each of the fields. Applying schedule prices to the various sizes in such a year, the average normal realization could be calculated.

Following this method, the District Board for District No. 23 took the actual figures for 1937 and added or deducted the fundamental items which the District Board knew had completely changed, such as the going out of business of a very large mine (Coronado) which mine produced practically all of the tonnage produced in one of the principal sub-districts. In addition, some large consumers of coal had gone to oil. or other kind of fuel. Taking into account the above factors known to exist, the District Board for District No. 23 readjusted the tonnage of the year 1937 in such manner as would be representative of present conditions.

The Secretary of the District Board for District No. 23 collected from the code members within the District their production and distribution of sizes shipped during 1937. With this information as a base, the Committee of practical men making the calculations for the District Board, added to or deducted from the 1937 individual figures those tonnages that they knew had been either increased or lost. Then applying the scheduled prices to the resultant individual figures of each sub-district, the District Board found the average realization of each sub-district as is shown on Exhibit No. 185. These were then recapitulated into the average for the District which also appears in Exhibit No. 185. As shown in Exhibit 185, the realization is \$3.1999. This realization was increased to \$3.2499 by the addition factors. Such knowledge was equitably spread geographical areas in the United of five cents to each price (Exhibit 184). employed by the District Board in deter-

may be to the weighted average cost of \$3.2656 as previously determined by the Commission for Minimum Price Area No. 10, the price area in which District 23 is placed under the Act.

Coal production in District 23 is less than 2,000,000 tons annually. Less than 1,500,000 tons of such production is commercial coal. Of this quantity approximately 5% is lump coal, approximately 15% is egg and nut size, and 80% will pass through a 1% inch screen. While the above percentages will vary greatly in the different fields and mines, yet the average will be as above set forth. In District 23 there are mines with practically no large coal. More than 75% of the coal produced at such mines will pass through a one-half inch screen. some mines in the District having important tonnages which pass through a 3/32 inch screen. Practically all the coal of the District must be washed and most of the mines have a serious reject loss as high in some cases as 25%.

The District Board for District No. 23 placed what it considered consistent price relationships between the large variation of sizes and between the many areas and mines producing such widely different qualities and types of coal in the District in this manner. The various kinds of coal produced in the state of Washington enter the same general markets. Coals produced in Oregon and Alaska do not enter the markets reached by Washington coals nor do Washington coals enter the markets reached by the Oregon and Alaska fields. Such areas in the District are completely isolated. Some of the coal produced in the state of Washington enters southwestern Alaska which is so far away from the Alaska mines that none of their coals reach that market. Some of the sizes and grades of coals produced in the state of Washington and sold in Washington markets go to the same general type of consumers and are, therefore, directly competitive. Other sizes and grades appeal to, or are usable by, quite different types of consumers and, at times, in the same consuming areas. The tonnage represented by these special consuming requirements is a substantial one containing all of the railroad and most of the industrial demand.

Long experience in the field alone can enable one to differentiate between values of certain coals necessary for or desired by the consumers for these special demands. As to one use, experience and purchase over years may show an advantage in some size of a relatively poorer general grade of coal while in other cases there are uses for which certain sizes of the highest grades are almost exclusively demanded by the consumer. In its consideration of relationship of prices between sizes and between fields and grades of coal, the District Board for District 23 was fully possessed of an intimate knowledge of all of the above and foregoing schedule.

The District Board for District No. 23 was of opinion and concluded that the price breaks or differentials used in the various sizes and between the several grades of coals and fields, or sub-districts, will permit continuance of, and not cause disruption of, long standing competitive relationships between the districts, mines and fields in production, distribution and selling and that rather than causing any disadvantage to the consumer, they will enable the industry better to serve the interests of the consuming public. The prices as proposed will maintain conditions which have over the years been brought about largely by and because of consumers' demands and desires. In consideration of such price relationships, the District Board considered competition with cheap water borne oil, low cost of wood products, cheap hydro-electric power and unrestricted foreign fuels.

In the revised schedule (Exhibit No. 184) there appears double letters as well as the usual single letters designating price levels. The District Board for District 23 determined that by the use of double letters the mines of either Oregon or Alaska could better determine the prices set for their coals. Such method of lettering does not, in any manner, disturb the proposal of relative prices, or price relationships. Double "A" ("AA") is simply that price next above single "A," double "C" ("CC") is that price lying between single "B" and single "C" and so on. All are shown in proper rotation and relationship in the schedule. An operator of a mine in Alaska can, under this method, easily locate the prices for his coal without having to search through a confusing maze of price classifications proposed for coals produced in the Washington and Oregon fields, and the operators in those fields are similarly convenienced.

As shown in its schedule, the District Board for District No. 23 divided the Washington mines into seven sub-districts and those of Oregon and Alaska into two sub-districts, respectively, making a total of eleven sub-districts. This number of sub-districts and the groupings of same were determined in this manner.

The two sub-districts respectively in Oregon and Alaska were requested by the members of those fields in order that two distinctly different types of mines might be segregated. In Oregon there is a quite low grade sub-bituminous coal area and a slightly higher grade subbituminous coal area, in which areas the mining conditions and marketing characteristics of coal vary considerably.

In Alaska one group is a medium grade sub-bituminous area while the other group approaches a bituminous grade.

mining the relationships submitted in its | marketing characteristics of coal are also | have less favorable mining conditions quite different.

In Washington the causes for the seven-group segregation have existed for years. The mines in the several groups have quite different mining conditions and necessities of preparation and their coals are different in quality as well as in their marketing purposes.

The sub-districts of Oregon and Alaska have been heretofore generally described. Oregon produces approximately 1/10 of 1% of the total tonnage produced in District 23, while Alaska produces about 7%.

Sub-district "A" in Washington is on the eastern slope of the Cascade Mountains with comparatively easy mining conditions which permits mechanical production. Its coal is of a bituminous grade producing normal percentages of coarse sizes. In addition to being popular in the general domestic and steam markets, such sub-district contains the mines which produce the only large railroad fuel tonnage in the state. The railroad and commercial production is approximately 40% of the production in District 23.

Sub-district "B" is high up in the western foothills of the Cascade Mountains. Its coal is of high grade coking and heavy steaming grade but being in broken country its production is all of fine sizes. Its mining conditions are most unfavorable and costly and its preparation problems difficult. The last of the large mines in this sub-district closed early in 1937 because of high cost of production and the final disappearance of a formerly large coal market. Its present mines are very small, and being unable to equip themselves with machinery for washing and preparing their coals the shipments of such coals have deteriorated in quality and value. This accounts for the lower price relationships placed on such coals in the revised schedules. This sub-district at the present time produces only 2% of the production of District 23.

Sub-district "C" is a small field far off to itself in the southwestern part of the state of Washington. Its coal is of low sub-bituminous grade, high in moisture and closely approaches lignite. Its production, approximately 4% of the district's total, comes from small mines, largely truck operations. Its coal is limited to domestic and very light steaming purposes. Its coal disintegrates quickly in storage and its market is strictly a local one. Coals from this sub-district come into little competition with other coals of the district.

Sub-district "D" is off to itself in the extreme northwestern part of the state of Washington. Sub-district "F" is in the immediate vicinity of the City of Seattle. The coals from both of these sub-districts are of the same general quality being a good grade of sub-bitu-

and the several seams worked at its different mines vary considerably in necessities of preparation and marketing characteristics. These coals need extensive washing and preparation facilities. Subdistrict "D" produces approximately 12% of the total production of District 23 while Sub-district "F" produces approximately 19%. The coals from Subdistrict "D" are used principally in cement plants while the coals from Subdistrict "F" are used principally by domestic consumers and consumers using the larger powdered coals.

Sub-district "E" is distinctly different from all the other sub-districts. Its mines are all on one seam which for years past has been the principal producer of western Washington. Its larger resources have been depleted and smaller mines are being worked. The coal is very low in ash, of a free burning bituminous grade and is principally used for domestic and industrial purposes. It produces but small percentages of coarse sizes. It is this seam that necessitated the unusually small size of "3/32 x 0" appearing in the schedule. The reason for such a size is that same must be extracted to free the steam sizes of objectionable physical difficulties but its quantity is so large that it must be saved and marketed. There is a limited but important market for this small size, it being preferred by industrial consumers, but only in keen competition with oil. This sub-district produces approximately 12% of the total production in District 23.

Sub-district "G" lies close to Groups "E" and "F." The coals of "F" and "G" go into the same markets to a considerable extent. The coal in sub-district "G" is of a distinctly heavier grade than the coals in Sub-district "F," is a straight bituminous coal and has medium coking qualities. Its seams require extensive washing and preparation. Approximately 5% of the total production of District 23 is produced in this sub-district.

The market areas appearing in the revised schedule (Exhibit 184) are the market areas into which the producers in District No. 23 ship their coals. These market areas appear at page 9 of the revised schedule and are Alaska, British Columbia, Idaho, Oregon, and Washington, and it is to such areas that the minimum prices are proposed by the District Board for District No. 23 to apply (Exhibit 184, p. 9).

The District Board for District No. 23 is composed of members thoroughly experienced in the production and sale of coals in District 23. Said District Board approved the schedule of proposed minimum prices, as revised (Exhibit 184), before submitting same to the Commission and, in the judgment of said Board, the prices proposed to the Commission as they appear in the revised schedule are just and equitable between the producers In such area the mining conditions and minous. The mines in sub-district "F" within the district; have due regard to

the interests of the consuming public; and do not, and will not, permit dumping. It was also the judgment of the District Board for District No. 23 that the prices proposed in the revised schedule reflect, as nearly as possible, the relative market values of the various kinds, qualities, and sizes of coals produced in District No. 23: reflect price variations as to values and as to uses: reflect price variations as to consuming market areas of the various kinds, sizes and qualities of coals produced within the district; are just and equitable as between producers within the District for shipment into any consuming market area; and conform to the requirements of Order No. 245 of the Commission and to the provisions of Section $4-\Pi$ (a) of the Act.

In establishing the proposed f. o. b. mine prices set forth in the schedule, both original and revised, the District Board for District No. 23 started with the largest size proposed of the largest producing district (Roslyn Sub-District "A") and then related the other sizes to that base, according to what the District Board considered to be the proper differentials. Then the costs of other sub-districts were related to those prices. The difference in prices appearing between the larger sizes and smaller sizes is due to salability. The differentials, or price relationships, as proposed by the District Board for District No. 23, are carried into the consuming markets.

And now, upon the record in this cause, upon the evidence, both documentary and otherwise, and upon the above and foregoing facts found to exist, the Commission finds:

That the revised schedule of minimum prices (Exhibit 184), as submitted to the Commission by the District Board for District 23, should be substituted in lieu of the original schedule of proposed minimum prices submitted to the Commission by the District Board for District No. 23. and accepted by the Commission as the schedule of proposed minimum prices submitted to the Commission by the District Board for District No. 23.

That the revised schedule of proposed minimum prices (Exhibit 184) as submitted to the Commission by the District Board for District No. 23 should be corrected and revised in order that same may better conform to Order No. 245 of the Commission and to the provisions of Section 4-II (a) of the Act, and said schedule is in the following respects modified:

Page 3 of the revised schedule should be deleted entirely for the reason that same is not necessary to the schedule.

Item 3 on page 4 of the revised schedule should be revised to read, "All size designations herein are for round hole screens, or their equivalent. When other types of screens are used, the District Board shall determine the actual size with the approval of the Coal Commis- | mission an original and revised schedule. sion."

Item 4 on page 4 of the revised schedule should be revised and corrected to read, "The prices listed herein are in cents per net ton of 2,000 pounds f. o. b. transportation facilities at the mine."

Item 7 on page 4 of the revised schedule should be revised and corrected to read, "When any size of coal is sold, in which the maximum top or bottom size exceeds the sizes scheduled, then such coal must be included in the next higher priced size group and priced accordingly."

Item 1 on page 4 of the revised schedule should be deleted as same is not necessary to the schedule.

Item 6 on page 4 of the revised schedule should be revised and corrected to read, "When washed Mine Run is shipped from Sub-district 'A,' a charge of 25¢ per ton shall be added to Mine Run price."

The table of Size Groups on page 5 of the revised schedule should be revised and rearranged as follows:

Size group No.	Single screened	Double screened
1 2 3 4 4 5 5 6 7 8 8 9 9 10 11 12 13 14 15 16 6 17 18 19 22 23 24 25 28	4" Lump. 3½" Lump. 2" Lump. ½" Lump. ¾" Lump. ¾" Lump. Mine Run. 3½" x 0". 2" x 0". 1½ x 0". 1½ x 0". 1½ x 10". Railroad locomotive fuel—all sizes.	4" x 2". 3½" x 2½". 3½" x 1½". 3" x 1¼". 2½ x 3½". 2" x 3½". 1¼" x 3½". 1¼" x 3½". 1½" x 3½". 1½" x 3½". 1½" x 3½".

The tables of classifications and of prices on pages 7, 7A and 8 of the revised schedule should be rearranged in conformity with the rearrangement of size groups. This is done in the "Schedule of Minimum Prices as Modified and Approved", attached hereto as an appendix to District 23.

That the District Board for District No. 23, as directed in Order No. 245 of the Commission, proposed minimum prices free on board transportation facilities at the mines for kinds, qualities and sizes of coal produced within the district, classification of coals and price variations as to mines, consuming market areas, and values as to uses. Seasonal demand was not taken into consideration.

That the District Board for District No. 23, as directed in Order No. 245 of Board shall determine the actual size No. 23, as directed in Order No. 245 of Table of Contents. designation of the coal so prepared, the Commission, submitted to the Com-Price Instructions and Exceptions.

of such proposed minimum prices, together with the data upon which same were computed, including but without limitation, the factors considered in determining the price relationship.

That the minimum prices proposed by the District Board for District No. 23 as appear in its schedule, as revised, reflect, as nearly as possible, the relative market value of the various kinds, qualities, and sizes of coal produced within the district; are just and equitable as between producers within the district: have due regard to the interests of the consuming public; and do not permit dumping.

That the minimum prices for any kind, quality, or size of coal for shipment into any consuming market area, as proposed by the District Board for District 23 in its revised schedule, are just and equitable as between producers within the district.

That the minimum prices as proposed by the District Board for District 23 in its revised schedule are proposed in such manner as to yield a return per net ton for the district equal as nearly as may be to the weighted average of the total costs, per net ton, of the tonnage of Minimum Price Area 10, the Minimum Price Area in which District 23 is placed under the Act.

That the revised schedule of proposed minimum prices (Exhibit No. 184) submitted to the Commission by the District Board for District No. 23 as amended, corrected, modified and revised, as hereinabove set forth conforms to Order No. 245 of the Commission and to the requirements of Section 4-II (a) of the Act and as so amended, corrected, modified and revised, the schedule should be and the same is hereby approved by the Commission, the same to serve as the basis for the coordination provided for in Section 4-II (b) of the Act. A copy of said schedule as amended, corrected, modified and revised appears in the Appendix for District No. 23.

APPENDIX FOR DISTRICT NO. 23 Schedule of Minimum Prices, as Modified and Approved, to Serve as a Basis for Coordination

Note.—The prices in this schedule are not the final prices that will be established on coal for shipment by Code Members within this district into consuming markets of this district. In the ultimate establishment of the effective minimum prices, pursuant to subsection (b) of Part II, Section 4 of the Act, the minimum prices in this schedule are subject to such increase or decrease respectively, as may be necessary to carry out the provisions of subsections (a) and (b) of Part II, Section 4 of the Act.

> F. W. McCullough, Secretary.

Issued: December 9, 1938. TABLE OF CONTENTS

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Size Groups. Sub-Districts Identification. Alphabetical List of Code Members. Prices. Market Areas.

Item No. and Price Instructions and Exceptions

keting Rules and Regulations issued by 1. All prices are subject to the Marthe National Bituminous Coal Commis-

actual size designation of the coal so outside the boundary of the United 2. All size designations herein are for round hole screens, or their equivalent. When other types of screens are used, the District Board shall determine the prepared, with the approval of the Coal Commission.

* .		1 4" Tarr
	Size group no.	-
3. All prices herein are in cents per net ton of 2,000 lbs. f. o. b. transporta-	tion facilities at the mines. 4. When coal is subjected to any chemical, oil or waxing process, an ad-	ditional charge of not less than 10 cents

per net ton shall be made.
5. When Washed Mine Run is shipped from sub-district A, an additional 25 cents per ton shall be added to Mine

6. When any size of coal is sold, in which the maximum top or bottom size exceeds the sizes scheduled, then such priced size group and priced accordingly. coal must be included in the next higher Run price.

Size Groups		Size	Single screened	Double screened
	Double	9		
Single screened	screened	4.8	\$\$'' x 0''. \$\$2'' x 0''.	
4" Lump. 8½" Lump.		28	Railroad Locomotive fuel—All sizes.	
2" Lump. 7%" Lump. 3%" Lump.	. x 2".	IDEN	IDENTIFICATION OF SUB-DISTRICT LETTERS Sub-district and Identification	T LETTERS ation
	3½" x 2½". 3¼" x 156".	٩١	Roslyn.	
	3½" x 1¼". 3" x 1¼".	mi c	Pierce County.	
-	2½" × ½" 2" × 1".	<u>ن</u> ز	Bellingham.	
	2" x 98".	E		
	1¼",x%".	댠	Renton.	
	156' x %2''	Ö	Cumberland.	
	1"x 3/3".	Ħ	Alaska-Healy River.	
Mine Kun. 3½" x 0".		H	Alaska-All other Mines.	
2', x 0',		٦.	Oregon-Riverton.	
1 1 × 0 · · ·		<u>М</u>	Oregon-Marshfield.	

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Separately Shown

States, prices stipulated herein are for payment in United States funds.

7. In the sale of coal to destined points

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Sub- district	りまえよなでありもりものものままなではなるようなできまままる
Mine name	Monarch New Blk. Diam Lake Young Lake Young Nos. 3, 5, 9 Nos. 3, 5, 9 Luthan Overland Overlenel Nonpareil Pocahoutas Queen Reliance Carbonado Newcastle Newcastle Ogarborade Newcastle Newcastle Newcastle Hatt Hatt
Code member	Monareb Coal Mining Co. New Bir. Dismond Coal Co. New State Young Coal Co. New Lake Young Coal Co. New Lake Young Coal Co. Overland Coal Co. Pacific Coast Coal Co. Peoples Fuel Co. Peoples Fuel Co. Peoples Fuel Co. Resimne Coal Co. Resign Coal Co. Springbrook Mining Co. Strain Coal Co. Strain Coal Co. Strain Coal Co. Tiger Mountain Coal Co. Strain Coal Co. Wilkeson-Wingre Coal Co. Wilkeson-Wingre Coal Co. Wilkeson-Wingre Coal Co. Wilkeson-Wingre Coal Co.

Prices for Shipment Into all Market Areas Showing the Average Price Per Ton for | geographical description of constinuing tests were filed in respect thereto with Each Size Group Based Upon Minimum Prices Which Will Return the Produc- | Market area to which prices apply the District Board. ing Cost of Price Area No. 10 of \$3.266

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Prices in cents per net ton of 2,000 pounds and size group numbers	Ħ			306	
	ធ			355	215
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See "Price instructions and exceptions."

The States, Territory and Province of: 2. British Columbia. Alaska.

Idaho.

4. Oregon. 5. Washington.

6—DISTRICT fINIMUM PRICE AREA NO. BOARD No. 16

ROPOSED MARKETING RULES AND REGULA-TIONS

in compilance with the aforementioned Commission Order, to the Code Members within District No. 16, and that no proproperly qualified as an expert in the narketing of coal in that District, intrososed by District Board No. 16, pursuant to Commission Order No. 244. The witless testified that these proposed rules A witness for District Board No. 16, uced into evidence, as Exhibit No. 189, he marketing rules and regulations prond regulations were properly submitted,

good reason was found for changing the As a basis for determining what rules and regulations should be submitted to the Commission, the District Board used the marketing rules and regulations A committee appointed to consider the subject, and the Board members, made a detailed study of each rule promul-gated by the Commission. Where no original rule, it was adopted and duly which were promulgated by the Commission under date of December 16, 1937. proposed by the Board.

been in substance proposed by both District Boards 16 and 17. The witness in testifying compared generally the rules The witness for District Board No. 16 ilar to the rules proposed by District Board No. 17. The witness introduced District Board No. 17 as testified to by This exhibit contains rules which have testified that the rules proposed by District Board No. 16 are substantially siminto evidence Exhibit No. 191 which consists of extracts from rules proposed by the witness for District Board No. 17.

the rules proposed by District Board No. 17. In the opinion of the witness for District Board No. 16, the rules testified to by the witness for District Board No. 17 were reasonable and suitable for District No. 16 except as to such differences in the rules proposed by District No. 16 which the witness testified were justifiable.

District Board No. 16 in defining a "sales agent" in Rule 2 of Section I specifically excludes from the definition "an employee of the code member." The witness testified that the purpose of this exclusion was to make certain that an employee of a Code member could not be considered or construed in the rules and regulations as a "sales agent." The witness testified that the sales agent does not take title to the coal. In order to fully effectuate the purpose of excluding from the definition of a "sales agent" an employee of a Code member and also a person who purchases the coal, we are of the opinion that the definition should be modified and clarified in the manner that we modified the definition of the same term proposed by District Board No. 17 in Section I, Rule 2 of Exhibit No. 187. (See Rule 2 of Section I of Composite Findings for District No. 17).

The Board restricted the definition of a "sales agent" to a person who sells coal at wholesale only for and on behalf of a Code member. The witness for the District Board justified this restriction on the ground that District Board No. 16 does not want to permit the granting of commissions to persons who sell in less than carload quantites. We are of the opinion that the restriction of the definition of a sales agent to those persons who, as agents, sell coal at wholesale for and on behalf of a Code member is improper. We construe the purpose of Section I of the rules proposed by the District Board to define certain terms which have been used in those rules. The District Board has propsed no rule prohibiting the payment of a commission to a person who, as agent in law and in fact, sells coal in less than wholesale quantities. As proposed by the District Board, the restriction contained in the definition of "sales agent" cannot be construed to have that effect. Furthermore, this Commission is not authorized by law to promulgate a rule which would prohibit the payment of commissions by Code members to sales agents who sell in less than wholesale quantities.

We are of the opinion that definitions 17 to 22 contained in Section I of the composite findings hereinafter given are reasonable and desirable. The District Board did not define these terms although they appeared in various rules proposed by the Board.

Rule 5 of Section V provides for the review by the Commission of the reasonableness of the amount of commission paid to sales agents and of the amount of discount allowed to Registered Wholesalers or Registered Farmers' Coopera- and premium contracts for the reason ting forth all conditions of said note,

that this rule should be eliminated. The rule in so far as it provides for review of the reasonableness of the amount of discounts paid is unnecessary for the reason that the Commission contemplates the establishment of maximum discounts pursuant to Section 4 II (h) of the Act before the marketing rules and regulations and minimum prices become effective. The Commission has jurisdiction to review the amount of commission paid to sales agents upon complaint of violation of the provision relating to the unfair methods of competition contained in the Act. Accordingly we modify Rule 5 of Section V to read as follows:

"Subject to further order of the Coal Commission, the amount of commission to be paid by a Code member to his sales agent shall be fixed by agreement of the parties, subject, however, that upon complaint of violation of the provisions relating to unfair methods of competition. as provided in the Act, the amount of such commission shall be subject to review by the Coal Commission."

The witness stated that he concurred in the testimony of the witness for District Board No. 17 with respect to the elimination of a rule proposed by District Board No. 17 which is similar to Rule 1 of Section VI of the rules proposed by District Board No. 16. The testimony of the witness for District Board No. 17 was merely that such proposed rule would be unnecessary if there was in existence an order of the Commission similar in substance. We are of the opinion that all rules which are properly marketing rules and regulations should be contained in these rules and regulations. We are likewise of the opinion that Rule 1 of Section VI of the rules proposed by District Board No. 16 should be modified in the same manner and for the same reasons as the similar rule proposed by District Board No. 17 in Section VI, Rule 1, was modified in the findings of fact in respect to rules proposed by the latter District Board. (See Rule 1 of Section IV of Composite Findings for District No. 17.)

It was the opinion of the witness that the allowable over-shipment or undershipment specified in Rule II C, Section VI, of Exhibit No. 189 should be increased from ten (10%) per cent to twenty (20%) per cent. The witness gave no reason for this suggested change except in so far as he concurred with the reasons given by the witness for District Board No. 17 to justify such change. We are of the opinion that Rule II C, Section VI, should be modified in like manner and for the reasons stated in the findings of fact for District Board No. 17 in respect to the modification of Rule II C, Section VI, proposed by the latter District Board. (See Rule II C of Section IV of Composite Findings for District No. 17.)

The witness testified that the Board did not want any rule permitting penalty cepted in settlement of any account, set-

proposed by District Board No. 16 with tives. It was the opinion of the witness that such contracts would encourage "chiseling" and cutting prices. The District Board, however, did not propose any rule prohibiting penalty and premium contracts. We are of the opinion that a Code member should not be permitted to enter into a contract made upon a penalty and premium basis which would permit the sale of coal at an aggregate contract price below the applicable minimum price for coal sold and delivered under such agreement subsequent to the effective date of the Marketing Rules and Regulations.

The witness testified that when the rules under Section IX, "Terms of Payment," were originally discussed, they were unsatisfactory to the District Board and the Code members: and that it was found necessary to appoint a special committee to meet with similar committees from Districts No. 17 and 19 with a view to working out acceptable rules. While the committees were unable to work out uniform rules satisfactory to the three District Boards, the Committee for District No. 16 was able to reach an agreement on rules as to terms of payment and a report rendered in respect thereto was found satisfactory by District Board No. 16. The special committee recommended certain changes in the rules as contained in Exhibit No. 189. It was recommended that Rule 2, Section IX, be amended to read as follows:

"Coals sold to an industrial consumer for its own use shall not be sold on more favorable terms than net cash on the 20th of each calendar month, for all coal shipped during the preceding calendar month, except as otherwise provided in this proposal, and paragraph 1, Section 9, hereof; no coal shall be sold on more favorable terms than net cash on the 10th of each calendar month for all coal shipped during the preceding calendar month. This paragraph, paragraph 1 of Section 9, hereof shall not be construed as requiring producers to extend to each purchaser the full credit terms herein permitted, but each producer shall be free to determine as to each purchaser whether credit be extended, and the terms of credit, if allowed, provided such terms are not more favorable than as herein provided for."

The committee also recommended the amplification of Rule 5, Section IX, to read as follows:

"Where payment is made by note, trade acceptance, or other form of indebtedness, the seller shall charge, and the buyer shall pay interest at the current market rate. Every code member, sales agent, registered wholesaler, and registered farmers' cooperative organization shall each month report to the Statistical Bureau, and the District Board for the district in which he is located, every case in which a note, trade acceptance, or other form of indebtedness, has been actrade acceptance, or other form of in-|should be deleted for the reason that it | No. 17, referred to below, were deleted debtedness."

It is our opinion that the former amendment to the proposed rules of the District Board is reasonable, consistent with the requirements of Section 4 of the Act, and in conformity with the standards of fair competition as established in Section 4, Part II (i) of the Act.

As to the latter amendment, a discrimination appears in that no provision is made for the charging of interest in the case where payment is not made at the due date of the account, whether by default of the buyer or pursuant to an agreement for an extension of the term of credit, and where such extension of the term of credit is not evidenced by a note, trade acceptance or other form of indebtedness. We therefore find that such amendment is unreasonable, as submitted and should be amended to include a provision for the charging of interest under any circumstances when the account is not paid at the due date thereof.

In respect to the rules contained in Section X, relating to registration of devices for the crushing and pulverizing of coal with the Coal Commission, the witness for the Board concurred in the opinion of the witness for District Board No. 17 that such procedural rules be left out of the Marketing Rules and Regulations and be the subject of a separate rule or order promulgated by the Commission.

We are of the opinion that the words "except as provided in paragraph (i) following" in Rule 6 of Section XI and that paragraph (i) of Rule 8 of Section XI should be deleted for the reason that these provisions exempt captive or controlled coal which is not exempt under Section 4 II (1) of the Act from the prohibition against screening of mine run or re-screening of other grades of coal for the buyer's account and would permit the uncontrolled substitution upon a sale of the size of coal at a relatively low established minimum price, of a size or sizes of coal for which a higher minimum price was established. These provisions would obviously result in defeating the realization by a Code member of the amount of the return required by the Act.

We are also of the opinion that Rule 6 of Section XI should be modified to provide that all coal must be sold and invoiced on a price per ton basis. This modification, in our opinion, is necessary for a uniform procedure and method to govern the selling and invoicing of coal. We believe this rule is necessary or otherwise the Commission must either establish supplementary prices based simply on thermal efficiency or else the Commission must undertake to translate sales made on such a basis into a price per ton basis in order to determine whether the minimum price has been violated or

We are of the opinion that the second

is impractical to enforce. Likewise, Rule 8 (f) of Section XI should be deleted for the reason that it creates an unreasonable discrimination.

Except as he testified specifically to the contrary, the witness for District Board No. 16 concurred, in his own opinion, with the opinions and testimony given by the witness for District Board No. 17 as to rules which were in substance proposed by both District Boards. After due consideration of all the testimony in the record, relating to the rules proposed by District Board No. 16, we are of the opinion that such of these rules as are referred to immediately hereunder should be modified and clarified in the same manner and for the same reasons that similar rules proposed by District Board No. 17, referred to immediately hereunder, have been modified and clarified in the composite findings for District Board No. 17:

DISTRICT BOARD NO. 16

Exhibit No. 189

Section I: Rules 2, 3, 4, 10. Section II: Rules 3, 4, 7.

Sections III and IV: Rule 1. Section V: Rules 2 and 5.

Section VI: Rules I, II, III, IV.

Section VII: Rules 1 and 3.

Section IX: Rule 5. Section XI: Rules 3, 5, 7.

DISTRICT BOARD NO. 17

Exhibit No. 187

Section I: Rule 2 (Findings for Dist. 17, Rule 2, Sec. I), Rule 3 (Findings for Dist. 17, Rule 3, Sec. I), Rule 4 (Findings for Dist. 17, Rule 4, Sec. I), Rule 10 (Findings for Dist. 17, Rule 7, Sec. I).

Section II: Rule 3-(Findings for Dist. 17, Rule 3, Sec. II), Rule 4 (Findings for Dist. 17, Rule 4, Sec. II), Rule 7 (Findings for Dist. 17, Rule 7, Sec. II).

Sections III and IV: Rule 1 (Findings for Dist. 17, Rule 1, Sec. III).

Section V: Rule 3 (Findings for Dist. 17, Rule 1, Sec. III), Rule 6 (Findings for Dist. 17, Rule 8, Sec. II).

Section VI: Rule 1 (Findings for Dist. 17, Rule 1, Sec. IV), Rule 2 (Findings for Dist. 17, Rule 2, Sec. IV), Rule 3 (Findings for Dist. 17. Rule 2 (F). Sec. IV). Rule 4 (Findings for Dist. 17, Rule 2 (G), Sec. IV).

Section VII: Rules 1 and 2 (Findings Dist. 17, Rule 1, Sec. V), Rule 4 (Findings for Dist. 17, Rule 4, Sec. V).

Section IX: Rule 4 (Findings Dist. 17, Rule 4, Sec. VII).

Section XI: Rule 3 (Findings for Dist. 17, Rule 3, Sec. VIII), Rule 5 (Findings for Dist. 17, Rule 5, Sec. VIII), Rule 7 (Findings for Dist. 17, Rule 7, Sec. VIII).

After due consideration of all the testimony in the record, relating to the rules proposed by District Board No. 16. we are of the opinion that the following rules proposed by District Board No. 16, contained in Exhibit No. 189, should be deleted for the same reasons that simi-

in the findings of fact for District No. 17:

DISTRICT BOARD NO. 16

Exhibit No. 189

Section I: Rules 5, 6, 7. Section III: Rules 2, 3, 4, 5, 6. Section IV: Rules 2, 3, 4, 5. Section V: Rules 1 and 3. Section X: Rules 1, 2, 3,

DISTRICT BOARD NO. 17

Exhibit No. 187

Section I: Rules 5, 6, 7. Section III: Rules 2, 3, 4, 5, 6. Section IV: Rules 2, 3, 4, 5. Section V: Rules 1 and 4. Section X: Rules 1 and 2.

After due consideration of all the testimony in the record relating to the rules proposed by District Board No. 16, we find the following rules and regulations incidental to the sale and distribution of coal by Code members in District No. 16, reflecting the deletions and modifications hereinbefore referred to. are reasonable, consistent with the requirements of Section 4 of the Act, and in conformity with the standards of fair competition established by Section 4, Part II (i) of the Act:

MARKETING RULES AND REGULATIONS INCI-DENTAL TO THE SALE AND DISTRIBUTION OF COAL BY CODE MEMBERS WITHIN DIS-TRICT NO. 16 AS PROPOSED BY DISTRICT BOARD NO. 16 AND AS APPROVED, DISAP-PROVED, OR MODIFIED FOR THE PURPOSE OF COORDINATION

Section I.—Definitions

- 1. The term "person" as used herein, includes individuals, firms, associations, partnerships, corporations, trusts, trustees, co-operatives, receivers and trustees in bankruptcy and in other legal proceedings, and any other recognized forms of business organizations.
- 2. A "sales agent" is a person who, as agent of a code member (and therefore without purchasing the coal), sells coal produced by such code member for him or on his behalf: Provided, that "sales agent" shall not include an individual (herein referred to as a "Salesman") regularly and continuously employed by a code member, and who regularly devotes the major portion of his time to the solicitation of purchases of coal produced by his code member employer.
- 3. A "commission" is the total of all compensations and allowances received by a sales agent from a code member for services rendered in the sale of coal.
- 4. A "registered distributor" is a person who has been duly registered by the Coal Commission pursuant to the rules and regulations prescribed by the Commission for the administration of Section 4 II (h) of the Act.
- 5. A "spot order" is a legal obligation paragraph of Rule 8 (e) of Section XI lar rules proposed by District Board for the sale and purchase of coal, the

made within not more than thirty (30) days from the date upon which the order was accepted.

- 6. A "contract" is a legal obligation for the sale and purchase of coal, the deliveries of which are stipulated to be made during a period longer than that specified for a spot order.
- 7. A "commitment" is the status of a contract between the time a quotation is accepted or an option is exercised and the time the contract is formally reduced to writing.
- 8. A "quotation" is an offer for the sale of coal at a price which the offerer may withdraw prior to its being acted upon by the offeree.
- 9. An "option" is an offer for the sale of coal at a price to be accepted within a time certain, during which time the offerer may not withdraw the offer without consent of the offeree.
- 10. "Coal Commission" as used herein, shall mean the National Bituminous Coal Commission established under the provisions of the Bituminous Coal Act of 1937.
- 11: "Act" as used herein, shall mean the Bituminous Coal Act of 1937.
- 12. "District Board" as used herein, shall mean any District Board established under the provisions of Section 4, Part I (a) of the Act.
- 13. "Statistical Bureau" shall mean, unless otherwise specifically stated, the Statistical Bureau of the Commission for the district in which the coal involved in any transaction is produced, or the district in which is located a mine of a Code member affected by any order or
- 14. "Minimum Price" shall mean a minimum price established and made effective by the Coal Commission.
- · 15. "Maximum Price" shall mean a maximum price established and made effective by the Coal Commission.
- 16. "Registration and Register" as used herein, shall refer to registration with the Coal Commission pursuant to rules and regulations prescribed by the Commission for the administration of Section 4 of the Act.
- 17. The term "producer" includes all individuals, firms, associations, corporations, trustees, and receivers engaged in the business of mining. coal.
- 18. The terms "reconsignment" and "diversion" as used herein shall mean the change in the original consignee or in the destination or route.
- 19. A "code member" means a producer who has accepted and holds membership in the Bituminous Coal Code promulgated under the Bituminous Coal Act of 1937.
- 20. "Coal" as used herein shall mean bituminous coal.
- 21. The term "bituminous coal" includes all bituminous, semi-bituminous, and sub-bituminous coal and shall exclude lignite, which is defined as a lignitic coal having calorific value in British thermal units of less than seven also file with the Statistical Bureau, or Commission, the amount of commission

having a natural moisture content in from his sales agents concerning sales place in the mine of 30 per centum or more.

22. The term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Section II.—Sales Agents

- 1. All appointments of sales agents by Code members or their agents or authorized representatives, and the terms and conditions of such appointments shall be subject to the Marketing Rules and Regulations from time to time established by the Coal Commission.
- 2. Each Code member shall require all his sales agents and agents and employees of sales agents to comply with the provisions of the Bituminous Coal Code and of all rules and regulations.
- 3. (a) Every contract for the appointment of a sales agent by Code members or by agents or authorized representatives of Code members, or any modification thereof, shall be in writing, and shall fully set forth therein all the terms and conditions of such contract, including the amount or basis of the sales agent's commission. Certified copies of all such agency contracts entered into on or prior to the effective date of the establishment of these rules and regulations and in effect on such date, shall be filed by the Code member with the Statistical Bureau, or Bureaus, within twenty (20) business days after such date.
- (b) Certified copies of all contracts appointing sales agents or of agreements modifying any sales agency contract, entered into subsequent to the effective date of these rules and regulations, shall be similarly filed by the Code member within ten (10) business days after the date upon which such contracts or agreements have been entered into.
- (c) Upon the expiration, termination, or rescission of any sales agency contract, the Code member principal shall make a report thereof to the Statistical Bureau, or Bureaus, within ten (10) business days after the date of such expiration, termination, or rescission.
- 4. (a) As to all coal sold by a Code member otherwise than through a sales agent or through an employee regularly employed as a salesman by the Code member, such Code member shall, not later than the fifteenth day of each month, file with the Statistical Bureau, or Bureaus, a list of all persons through whom, directly or indirectly, any such coal was sold during the preceding calendar month, with a statement of the duration and character of their employment, the tonnage sold by, and the rate and amount of compensation paid to, each of them.
- (b) Not later than the fifteenth day of each month, each Code member shall

delivery of which is stipulated to be thousand six hundred per pound and Bureaus, similar information obtained of coal made during the preceding calendar month, by the sales agents' representatives and employees other than salesmen regularly employed.

- (c) Not later than the fifteenth day of each month, each Code member shall also file with the Statistical Bureau, or Bureaus, a statement showing the names and addresses of distributors to whom the Code member or his sales agents sold coal during the preceding calendar month, the tonnage sold, and the amount of discount allowed to each such distributor.
- 5. A list showing the names and addresses of sales agents and the Code members for whom such agents act shall be published by the Coal Commission from time to time.
- 6. All agency contracts and other information filed by Code members in conformity with the foregoing regulations, other than the names and addresses of sales agents, shall be held by the Coal Commission as the confidential records of said parties and shall not be made public without the consent of the Code member from whom the same shall have been obtained, except where such disclosure is required in any proceeding before the Coal Commission by way of enforcement of the Act or upon the order of any court of competent jurisdiction.
- 7. From and after twenty (20) business days following the effective date of these Marketing Rules and Regulations no Code member or sales agent of Code member shall allow or pay, directly or indirectly, any commission or compensation to any sales agent
- (a) Unless the contract of agency shall have been filed with the Coal Commission, as hereinbefore required, and
- (b) Unless the sales agent shall have agreed, in writing, with the Code member to conform to and observe the minimum and maximum prices and Marketing Rules and Regulations established by the Coal Commission and the Fair Trade Practice Provisions of the Act, as well as proper Orders of the Commission, and
- (c) Unless the sales agent shall have in good faith complied with the agreement as in paragraph (b) above provided.
- 8. No commission shall be paid to a sales agent by a Code member where the coal is delivered or sold to any person who, financially or otherwise, controls such agent in whole or in part.

Section III .- Discounts and Allowances

- 1. No Code member or sales agent of a Code member shall pay or allow any discount from minimum prices to any person unless such person has been registered by the Coal Commission as authorized to receive such discount at the time of the sale.
- 2. Subject to further order of the Coal

to be paid by a Code member to his sales | ber of cars or tonnage to be shipped, the | days. If the minimum price is increased agent shall be fixed by agreement of the parties subject, however, that upon complaint of violation of the unfair methods of competition, as provided in the Act, the amount of such commission shall be subject to review by the Coal Commission.

Section IV. - Quotations, Options and **Contracts**

- 1. Subject to further order of the Coal Commission no Code member or sales agent of a Code member shall enter into any agreement or order for the sale of coal providing for delivery for a period in excess of that authorized for a spot order, and no prices shall be less than the applicable minimum prices in effect at the time of the making of the agreement; Provided, however, that contracts for periods not exceeding one (1) year may be made with agencies of the Federal Government or with such agencies of State or local governments, as are required by law to purchase coal for periods in excess of thirty (30) days, at the following applicable minimum prices:
- (a) For deliveries during the first thirty (30) days of the contract, at not less than the applicable minimum prices in effect at the time of the making of the agreement;
- (b) For deliveries thereafter, at not less than the applicable minimum prices in effect at the time of delivery if such price is higher than the contract price.
- In the case of governmental agencies. options may be given for a period not exceeding forty-five (45) days. Subject to further order of the Coal Commission. no option for the sale of coal may be given, except as herein specifically pro-
- 2. Upon the revocation or suspension of Rule 1 of this Section, Code members or sales agents of Code members may thereafter enter into contracts for the sale and delivery of coal at prices not less than the minimum price in effect at the time of the making of the contract, upon the following conditions:
- (a) No contract for the sale of coal shall provide for delivery over a period in excess of twelve (12) months, except by special permission from the Coal Commission upon a showing of the necessity of meeting long term contract competition of oil, gas, or other fuels or forms of power, or for such other reasons as the Commission may deem appropriate in order to further the effectual administration of the Act.
- (b) No contract for the sale of coal shall provide for deliveries to commence at a time later than ninety (90) days from the date upon which such contract was entered into.
- (c) All contracts shall be in writing and shall express the entire agreement between the parties. The contract shall clearly state the date of execution, the effective date, the expiration date, the

name of the originating mine, and, where the coal is purchased for consumption. the use to which the coal is to be applied. Contracts may also be made either (1) calling for a buyer's entire requirements or a stated percentage of his requirements, showing the maximum tonnage to be shipped thereunder, or (2) covering a buyer's requirements and specifying the tonnage to be shipped with an allowable overshipment or undershipment of not exceeding twenty (20) percent of the tonnage specified.

The provisions of the rule stated in the foregoing paragraph relating to quantity shall not apply to contracts made with agencies of the Federal, State or local Governments.

- (d) Every contract shall express the entire agreement between the parties and no modification thereof shall be made except by written agreement which shall conform to all the requirements set forth in these rules and regulations.
- (e) Each contract shall contain the following provisions, the meaning and effect of which shall not be changed or altered by any other provision of the contract:
- "(1) This contract and the performance of all provisions thereof are expressly subject to the Bituminous Coal Act of 1937 and the lawful orders and regulations issued thereunder by the National Bituminous Coal Commission.
- "(2) No shipment consigned to any destination point may be diverted or reconsigned without the consent of the seller confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the minimum price prescribed for such coal for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.
- "(3) The coal shipped pursuant to this contract is sold and purchased upon the following conditions:
- "(A) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein:
- "(B) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied."
- (f) In any case where a contract is made by a sales agent of a Code member, such sales agent shall not exercise the rights of the seller as defined in Item (e) (2) of rule 2 of this section without first securing the consent of the Code member producing such coal to be confirmed in writing.
- (g) Upon the revocation or suspension of Rule 1 of this Section, quotations and price agreed upon, the terms of payment, options for the sale of coal may be given the size and grade of coal sold, the num-for a period not exceeding fourteen (14) to a use other than that stated herein,

- beyond the quoted price within such fourteen (14) days, any quotation or option not accepted or exercised prior to the effective date of the price change shall, without notice, be considered withdrawn and no longer effective. Every quotation or option shall contain a provision to the foregoing effect and shall further stipulate that any contract or spot order entered into thereunder shall be subject to these Marketing Rules and Regulations.
- (h) The provisions of this Rule 2 (g) shall not apply to sealed bids on business of the United States Government or States or political subdivisions thereof, in which cases quotations and options at not less than the minimum price in effect at the time the bid is filed may be given for a period not exceeding fortyfive (45) days from the final filing date of bids.
- 3. A report of every commitment shall be filed by the Code Member or his sales agent with the Statistical Bureau or Bureaus within fifteen (15) business days from the date of the making of the agreement. Such reports shall set forth all the terms and conditions of the commitment. A true copy of every contract and of any agreement for modification thereof shall be filed with the Statistical Bureau within fifteen (15) business days from the date of execution of such contract or agreement for modification: Provided, however, that a report of the commitment need not be filed if a copy of the contract is filed within fifteen business days.

Section V.—Spot Orders

- 1. A spot order shall be in writing or confirmed in writing within five (5) business days from the date of the making thereof.
- 2. Each spot order shall be subject to the following conditions which shall either be endorsed upon the form of the order or upon the written confirmation thereof by the Code member or his sales agent, the meaning and effect of which shall not be changed or altered by any other provision of the order:
- "(a) No shipment consigned to any destination may be diverted or reconsigned without the consent of the seller confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the minimum price prescribed for such coal for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.
- "(b) The coal shipped pursuant to this order is sold and purchased upon the following conditions:
- "(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein:

the buyer shall notify the seller in writbuyer shall pay not less than the applicable minimum price prescribed for such coal at the time of diversion for the use to which it is actually applied.

- "(c) If shipments called for by this order are not completed within thirty (30) days from the date of this order, the unfilled portion of the order shall be cancelled and no delivery of such tonnage shall be made."
- 3. In any case where a sale is made by a sales agent of a Code member, such sales agent shall not exercise the rights of the seller as defined in Item 2 (a) of this Section without first securing the consent of his Code member principal to be confirmed in writing.
- 4. All the terms and conditions of a sale of coal must be fully and expressly. set forth either in the order or in the written confirmation thereof, and such order or written confirmation thereof shall specifically contain all the terms required by Rule 2 (c) of Section IV of these marketing rules and regulations. Within ten (10) business days after the date of the making of the spot order or date of the written confirmation thereof, the Code member or his sales agent shall file with the Statistical Bureau or Bureaus a copy of such spot order or confirmation. Any modification of a spot order must also be made in writing and filed with the Statistical Bureau or Bureaus in the same manner.

Section VI.—Use of Coal Analyses

- 1. No analysis of coal shall be utilized by a Code member, sales agent, sales representative or wholesaler, or farmers' co-operative organization making a resale, in selling or offering for sale any coal produced by the Code member, unless such Code member shall have previously filed with the Statistical Bureau of the Coal Commission and the District Board for the district in which the coal is produced, copies of such analysis, together with a certificate setting forth the time and manner of obtaining the sample analyzed, the name and address of the person or firm making the analysis and stating that such analysis is truly representative of the grade and size of coal as regularly produced by the Code member. Each such analysis shall be not less than a proximate analysis showing ash, volatile matter, fixed carbon, sulphur and British Thermal Units and ash softening temperature. Each analysis shall further show whether made on an "as received" or moisture "free" basis, and if on an "as received" basis, the analysis shall include moisture content.
- 2. All analyses so filed shall be subject to inspection at the office of the Statistical Bureau at any time during office hours by any interested person, and may be used by the District Board and the Coal Commission in determining from time to time proper classifications of the coals produced by the Code member.

3. From and after the effective date of | ing and the seller shall charge and the these rules and regulations, no Code member shall enter into or perform any agreement made upon a penalty or a premium and penalty basis which will permit the sale of coal at an aggregate contract price below the applicable minimum price established by the Coal Commission for the coal sold and delivered upon such agreement subsequent to said effective date: Provided, that where a Code member has entered into an agreement made upon a penalty or a premium and penalty basis, this rule shall not be considered as affecting any claim that the buyer might otherwise have had for substandard preparation or quality under Section IX of these marketing rules and regulations.

Section VII.—Terms of Payment

The price and fair trade practice provisions of the Act shall not be evaded or violated by a Code member or his sales agent through the use of terms of payment, and in no instance shall terms of payment be more favorable than the following:

- 1. On railroad fuel, the date of payment shall be on or before the 25th of the month following the date of shipment.
- 2. Coals sold to an industrial consumer for its own use shall not be sold on more favorable terms than net cash on the 20th of each calendar month, for all coal shipped during the preceding calendar month, except as otherwise provided in this proposal, and paragraph 1, Section 7, hereof; no coal shall be sold on more favorable terms than net cash on the 10th of each calendar month for all coal shipped during the preceding calendar month. This paragraph, paragragh 2 of Section 7 hereof, shall not be construed as requiring producers to extend to each purchaser the full credit terms herein permitted, but each producer shall be free to determine as to each purchaser whether credit be extended, and the terms of credit, if allowed, provided such terms are not more favorable than as herein provided for.
- 3. Payment shall be made in full and on a net cash basis. No portion of the invoice price may be withheld by agreement by reason of any unadjusted claim of the buyer, nor shall any portion be withheld or deposited in escrow by reason of any alleged agreement relating to the constitutionality of any provision of the Act or the validity of any order of the Coal Commission.
- 4. Where payment is made by note. trade acceptance, or other form of indebtedness, or where payment is made under any circumstances after the due date of the account, the seller shall charge, and the buyer shall pay interest from and after the due date of account at the current rate in the locality to which the coal is shipped to the vendee. Every Code member or his sales agent shall each month report to the Statistical Bureau, and the District Board for the district in which he is located, every shipment of coal of substandard prepa-

case in which an overdue payment or a note, trade acceptance, or other form of indebtedness, has been accepted in settlement of any account, setting forth all conditions of such overdue payment, note, trade acceptance, or other form of indebtedness.

- 5. Freight on rail shipments shall not be paid by a Code member or his sales agent, except to prepay stations as published in current railway tariffs, or to the United States Government, States or political subdivisions thereof. Where freight is thus prepaid, the amount thereof shall immediately upon receipt of freight bill or notice of sight draft payment, be invoiced to the buyer for immediate payment.
- 6. The agreement by a Code member, express or implied, to extend credit for a period longer than that authorized by these rules and regulations, with the effect of violating the price provisions or the unfair methods of competition of the Act, shall constitute a violation of the

Section VIII.—Miscellaneous

- 1. No deduction or allowance from invoice prices shall be granted by any code member or his sales agent to any purchaser for advertising.
- 2. Code members (or their agents or representatives) either individually or collectively, with or without financial participation by retailers of coal, may conduct advertising campaigns seeking to increase the use of coal. The amount of expenditures incurred by a code member, his agent or representative for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.
- 3. Where coal is refused by a consignee in transit or at destination, the Code member may sell the same at the best obtainable price; Provided, that in each case the Code member shall file with the Statistical Bureau, within five (5) days from the date of such resale a statement giving the name and address of the consignee and the reasons for the refusal, the price at which the coal was originally sold, the name and address of the purchaser upon resale and the price received by the seller upon resale, a copy of the carrier's notice of refusal or notice of reconsignment and such other pertinent facts as may be offered in proof of the necessity of such resale, and that in making such resale the provisions of the Code and the Marketing Rules and Regulations of the Coal Commission other than as to price have not been violated or evaded.
- 4. All Code members shall promptly furnish to the Statistical Bureau of the Coal Commission for the District in which the coal originated, full reports of all reconsignments and shall authorize the carrier making such reconsignments to furnish complete information thereon to such Statistical Bureau.
- 5. No allowance shall be made for any

ration or quality unless formal claim | shall not be made with the purpose or | of a "sales agent". We are of the opinduly executed by or on behalf of the effect of conferring any advantage on ion that the definition of a "sales agent" buyer and verified by affidavit setting forth the amount claimed by way of allowance and reasons for the claim is filed with the Code member or his sales agent within ten (10) days after the receipt of the coal.

The Code member or sales agent with whom such claim for allowance is filed shall immediately notify the Statistical Bureau and the District Board, furnishing an authentic copy of the buyer's claim together with a statement of the producer's views as to the validity of the claim, setting forth:

- (a) The name and address of the consignee and the reason for the allowance.
- (b) The amount of allowance or adjustment made.
- (c) The price at which the coal was sold.
 - (d) The tonnage delivered.
- (e) The name of the mine and the Code member.
 - (f) Date of shipment.
- (g) Grade and size of coal and destination.
- (h) A statement that the adjustment has not been made with the purpose or intent of evading the price or fair trade practice provisions of the Act.
- 6. The screening of mine run or rescreening of other grades of coal sold and billed as such for the buyer's account for the purpose of keeping the resultant products separate in the shipment thereof is prohibited. All coal must be sold and invoiced on a price per ton basis and under the designation shown therefor in the price schedule published by the Coal Commission.
- 7. All coal confiscated or lost in transit shall be invoiced to the carrier at not less than the minimum price established for such coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or lost, whichever may be the higher.
- 8. No substitution may be made upon any spot order or contract, of any grade or size of coal taking a minimum price higher than the price specified in such order or contract, except upon the following conditions:
- (a) The proposed substitution shall not be an express or implied condition of the order or contract.
- (b) The coal substituted must be coal which the Code member has already produced and loaded into transportation facilities and which cannot be sold promptly by the exercise of the usual sales effort, such substitution to be limited to a specific tonnage for shipment on a specific order and from a specific mine.
- (c) The substitution must be reasonably necessary as an emergency measure in order to continue operation of the mine of the Code member.
- (d) The substitution shall be accept-

the purchaser or securing any preference or advantage for the Code member over his competitors.

- (e) Such substitution may be made only with the approval of a duly designated representative of the Commission and in such instance formal application therefor shall be made upon forms provided by the Commission and permits shall be issued prescribing the conditions of substitution in each case approved.
- (f) Copies of substitution permits shall be mailed daily to the office of the District Board and weekly summaries of substitution permits shall be mailed to all District Boards within the Price Area. The Commission may from time to time publish the essential facts as to all substitution permits granted.
- (g) In each case of coal shipped under a substitution permit each invoice shall specifically show the permit number and the size and grade of coal substituted.
- (h) Pea or slack shall not be loaded for shipment in box cars.
- 9. Failure to file information required by the within Marketing Rules and Regulations or the filing of false information. wilfully made, will subject the party failing to file the information required or the party so filing, to the penalties of the Act and other penalties imposed by law.
- 10. These Marketing Rules and Regulations are subject to revision and amendment by further order of the Coal Commission.

MINIMUM PRICE AREA NO. 6-DISTRICT BOARD No. 17

PROPOSED MARKETING RULES AND REGULA-TIONS

A witness for District Board No. 17. properly qualified as an expert in the marketing of coal in that District, introduced into evidence as Exhibit No. 187 the rules and regulations proposed by District Board No. 17 in compliance with Commission Order No. 244. This witness testified that these rules and regulations were properly submitted to Code Members within said District and that no protests concerning such proposals were received from Code Members. Accordingly. the Board, on August 3, 1938, adopted said rules and regulations and later submitted them to the Commission.

District Board No. 17 proposed the following definition of a sales agent, Exhibit No. 187, Section 1, paragraph 2:

"A 'sales agent' is a person who as agent, in law or in fact, sells coal for or on behalf of a code member."

Rule 4, Section 2, of Exhibit No. 187, providing for the filing with the Commission of certain data, differentiates a sales agent from a sales representative regularly employed as salesmen. It is apparent from this rule that the District Board did not intend that a sales representative regularly employed as a salesshould be clarified so as clearly to indicate this differentiation. For the purpose of further clarification, and to prevent the granting of discounts in the form of commissions, we are of the opinion that the definition of a sales agent should clearly indicate that persons who purchase coal do not come within the scope of the definition. Accordingly, we modify the definition of a "sales agent" contained in Section 1, rule 2, to read as follows:

"A 'sales agent' is a person who, as agent of a code member (and therefore without purchasing the coal), sells coal produced by such code member for him or on his behalf: Provided, that 'sales agent' shall not include an individual (herein referred to as a 'salesman') regularly and continuously employed by a code member, and who regularly devotes the major portion of his time to the solicitation of purchases of coal produced by his code member employer."

For the purpose of clarification, we modify the definition of a "commission" contained in Section 1, rule 3, to read as follows:

"A 'commission' is the total of all compensations and allowances received by a sales agent from a code member for services rendered in the sale of coal."

The witness for the District Board testified that by the use of the terms "wholesaler" and "farmers' cooperative organization" in the Board's rules relating to registration contained in Sections 3 and 4 of Exhibit No. 187, the District Board meant distributors as referred to in Section 4 II (h) of the Act. The witness for the District Board was of the opinion that a more effective compliance with the Act would be secured if the registration of the "wholesalers" and "farmers' cooperative organizations" would be complete before these marketing rules and regulations became effective. Accordingly, it was the witness' opinion that the rules relating to the registration of wholesalers and the rules relating to the registration of farmers' cooperative organizations proposed by the District Board should not be submitted in this hearing. Consideration of such rules in this hearing is improper for the reason that Order No. 244 only directed the various District Boards to propose rules and regulations incidental to the sale and distribution of coal by Code Members. It was the opinion of the witness, however, that rules providing that no discount should be granted except to persons properly registered with the Commission were proper in this hearing and the witness is correct in this respect.

In light of these views, we are of the opinion that any definition purporting to define what persons come within the term "distributor," as used in Section 4 II (h) of the Act, is improperly subable to the purchaser of the coal, and man should be included in the definition mitted in this hearing and that, accordingly, the definitions of a "wholesaler" and "farmers' cooperative organizations" proposed by the District Board in Section I, paragraph 4 and 5, should be deleted and that the following definition of a "registered distributor" is proper:

"A 'registered distributor' is a person who has been duly registered by the Coal Commission pursuant to the rules and regulations prescribed by the Commission for the administration of Section 4 H (h) of the Act."

We are of the opinion that the definition of a "wholesale discount" proposed in Section I, paragraph 6, is not a proper subject for consideration in this hearing but should be determined in a hearing held pursuant to Section 4 II (h) of the

The term "retailing" appears only in a rule which provides that "no discount from minimum or other prices shall be paid or allowed on coal sold to any person for retailing by him."-Section V, rule 4, Exhibit No. 187. The term is defined as the selling of coal in lots of less than a cargo or railroad carload. It is apparent that the District Board intended to prohibit the payment of all discounts except as authorized by Section 4 II (h) of the Act. Since such a rule is in fact determinative of those persons who may receive discounts under Section 4 II (h) of the Act, we are of the opinion that it is not properly the subject of this hearing. Accordingly, the definition of "retailing" contained in paragraph 7 of Section I should be deleted.

For the purpose of clarification, we modify the definition of a "commitment" contained in paragraph 10 of Section I to read as follows:

"A 'commitment' is the status of a contract between the time a quotation is accepted or an option is exercised and the time the contract is formally reduced to writing."

We are of the opinion that definitions 17 to 22 contained in Section I of the composite findings hereinafter given are reasonable and desirable. The District Board did not define these terms although they appear in various rules proposed by the Board.

Rule 3 of Section II requires all contracts for the appointment of sales agents by Code Members, or authorized representatives of Code Members, to be in writing and that copies of such agency contracts shall be filed with the Statistical Bureau. It is obvious that the purpose of this rule is to furnish necessary information to the Commission to enable it to determine whether or not the code is being violated by sales agents or by Code Mèmbers through the use of sales agents. In order fully to effectuate the purpose of this rule, we are of the opinion that the rule should be modified as hereinafter set forth in rule 3 of Section: II of the composite findings, so as clearly

contract, including the amount or basis of the sales agents' commission, and, furthermore, that all agreements modifying sales agency contracts should likewise be in writing and filed with the Statistical Bureau. The District Board leaves a blank date for the time of filing such contracts entered into prior to the effective date of these rules and regulations. The witness for the District Board testified that dates were left blank in the District Board's proposals so that the Commission could fill in the effective date. We believe that a period of twenty (20) days after the establishment of the rules and regulations is a reasonable period within which to require the filing of sales agency contracts entered into on or prior to the effective date of these rules and regulations.

Rule 5 of Section II provides that the Commission should publish a list showing the names and addresses of sales agents and the Code Members for whom such agents act. In order that the Commission may properly carry out this rule and so that the lists published shall be accurate, we are of the opinion that the Code Member principal shall report to the Statistical Bureau the expiration, termination or rescission of all sales agency contracts as provided in rule 3 (c) of Section II of the composite findings hereinafter set forth.

It is apparent that the District Board, by rule 4. Section II, intended that each Code Member shall file monthly with the Statistical Bureau a statement showing the tonnage sold to wholesalers and the amount of discounts paid or allowed to them. We are of the opinion that this rule should be clarified so as clearly to require such filing as provided in rule 4 (c) of Section II in the composite findings hereinafter set forth.

It is apparent that the blank date in rule 7 of Section II was meant to conform to the blank date in rule 3; therefore, the period after which no Code Member shall pay any commission to a sales agent under this rule should be twenty (20) days after the effective date of these marketing rules and regulations. Furthermore, we are of the opinion that this rule should be clarified as set forth in rule 7 of Section II of the composite findings subsequently given.

Section V, rule 6, prohibits the payment of a commission to a sales agent where the coal is delivered or sold to any person who controls in whole or in part such sales agent. This rule, as it relates to sales agents, should be properly contained in Section II which is entitled "Sales Agents." Witness for the District Board testified that in his opinion the rule should be modified so as also to prohibit the payment of commissions where the sales agent controls the purchaser. In our opinion, this modification is improper for the reason that it is obviously intended to prevent possible price evasion through the use of subsidiaries to indicate that the contract shall set or affiliated sales agencies. Such a rule from receiving a discount on coal resold

forth all the terms and conditions of the comes within the provisions of Section 4 II (g) of the Act and, accordingly, should only be considered at a hearing held pursuant to the provisions of that section.

> As previously stated, the witness for the District Board was of the opinion that rules relating to the registration of wholesalers and to the registration of farmers' cooperative organizations should not be considered in this hearing. In light of this testimony and in view of the fact that the Commission's Order related solely to the rules concerning the sale of coal by Code Members, we are of the opinion that rules 2, 3, 4, 5, and 6, of Section III, and rules 2, 3, 4, and 5, of Section IV, should be deleted and that rules I of Sections III and IV should be combined and modified to read as fol-

> "No Code Member or sales agent of a Code Member shall pay or allow any discount from minimum prices to any person unless such person has been registered by the Coal Commission as authorized to receive such discount at the time of the sale."

> Rule 2 of Section V would permit the payment of a discount to a wholesaler or farmers' cooperative organization merely upon the filing of an application for registration. The witness was of the opinion that such a rule would not be desirable and that, in fact, the District Board only intended that a discount should be granted where registration had actually taken place. Accordingly, rule 2 of Section V should be deleted.

As previously stated, rule 4 of Section V, in light of the definition of "retailing" as proposed by the Board is determinative of the persons entitled to a discount under Section 4 II (h) of the Act, and accordingly, is not a proper subject for consideration in this hearing.

Witness for the District Board testified that rule 5 of Section V would not be desirable if the Commission were to establish maximum discounts before the prices became effective. The Commission contemplates the establishment of such maximum discounts prior to the effective date of minimum prices and, accordingly, rule 5 of Section V should be deleted.

In so far as rule 6 of Section V prohibits the payment of a discount to a wholesaler where the coal is delivered or resold to any person who controls in whole or in part the wholesaler, we are of the opinion that this rule cannot be properly enforced and, accordingly, should be deleted. In a proceeding against a Code Member for violation of this rule, a Code Member must be charged with knowledge of the fact that the wholesaler intended to resell the coal to a person who controls the wholesaler. It would be extremely difficult to prove such knowledge on the part of a Code Member. From the point of view of enforcement, the purpose of this rule could be properly effectuated only by a rule which would prohibit the wholesaler

to any person who controls him in whole | number of cars or tonnage to be shipped. | II (g) of the Act, which prohibits such or in part, and such a rule is the subject of consideration under a hearing held pursuant to Section 4. Part II (h) of the Act.

In proposing rule 1 of Section VI, prohibiting any agreement or order providing for delivery in excess of thirty (30) days, the District Board in its proposal left blank the period during which this rule was to be operative. The witness for the District Board testified that this rule should reasonably be in effect for a period of only sixty (60) days after the establishment of minimum prices, although the District Board in rule II of Section VI indicated that ninety (90) days would be a reasonable period. This rule is a drastic curtailment of the right to contract and is justified only by the absolute necessity of prohibiting inequities between Code Members as a result of long term contracts based upon prices which experience may prove to be incorrect. Since the time of revocation of the rule is dependent upon experience under regulated prices, such revocation date cannot be predetermined, but must be made subject to order of the Commission.

Rule II of Section VI, relating to the right to enter into contracts, provides that contracts may be entered into for the sale or delivery of coal at prices not less than the minimum price in effect at the time of the making of the contract. The Act does not authorize the establishment of a different governing minimum price based simply on the maximum length of time for which contracts may be made. Accordingly, we are of the opinion that the governing minimum price while rule 1 is in effect should likewise be the price in effect at the time of the making of the contract. However, rule 1 provides an exception for sales to governmental agencies in that contracts may be made with such agencies for a period not exceeding one (1) year at prices not less than the minimum price in effect at the time of the delivery. In order to minimize the possible unfairness that might result from permitting contracts to be made for one (1) year to governmental agencies, we are of the opinion that the governing minimum price as to such contracts should be the price established by the Coal Commission in effect at the time of delivery. However, for deliveries during the first thirty (30) days of such a contract, the governing minimum price should be the price in effect at the time of the making of the contract, in order to place governmental agencies and other purchasers on an equal basis during the spot order period. Accordingly, we modify rule 1, Section VI of Exhibit 187 in the manner set forth in rule 1 of Section IV, of the composite findings subsequently given.

Rule II C of Section VI provides that all contracts shall be in writing and shall specify the date of execution, the effec-

While this rule is properly construed as to require that such writing shall specify all the essential terms of the contract, we are of the opinion that, for the purpose of clarification, the rule should specifically require that the writing should IV of the composite findings hereinlikewise state the price agreed upon; the terms of payment; the size and grade of the coal sold; the name of the Code Member producer and the originating mine; and, where the coal is purchased for consumption, the use to which the coal is to be applied.

In testifying as to the restrictions contained in this rule on an allowable over or under shipment where the contract covers a buyer's requirement and specifles the amount of tonnage to be shipped, the witness, in answer to a question whether twenty (20%) per cent would be a fairer percentage than the ten (10%) per cent, testified that, in his opinion, flexibility is required in certain exceptional instances as on sales to governmental agencies. The witness likewise testified that the ten (10%) per cent restriction is not desirable on sales to railroads and that on sales to governmental agencies as much as fifty (50%) per cent is sometimes necessary. In light of this testimony, we are of the opinion that the ten (10%) per cent restriction should be changed to twenty (20%) per cent and that an exception from the rule relating to quantity should be made in the case of contracts with agencies of the Federal, State, or local Government. Accordingly, we modify rule II C of Section VI in the manner set forth in rule 2C of Section IV of the composite findings subsequently given.

Rule II of Section VI provides that no contract shall be made for the delivery of coal for retailing at less than the minimum price in effect at the time of shipment. This rule makes an exception to the general rule contained in rule II. which provides that contracts may be entered into for the sale of coal at prices not less than the minimum price in effect at the time of the making of the contract. The witness for the District Board, on cross-examination, testified that this exception was justified in that industrial consumers must be protected by contracts at a price fixed at the time of the making of the contract and that such rule, if applied to retail dealers, would destroy the possibility of any satisfactory operation of the Act. It is our opinion that such discrimination as to retail dealers is unwarranted and unreasonable, and therefore Rule II E of Section VI should be deleted.

As stated by the witness for the District Board, rule II F 2 is necessary in order to prevent the sale below the minimum price by absorbing transportation charges. Accordingly, this rule should be deleted and considered separately in absorption.

We are of the opinion that rules 3 and 4 under paragraph 11 F of Section VI should be clarified as hereinafter set forth in rules 2 E 2 and 3 of Section after given.

Paragraph 5 of Rule II F of Section VI should be deleted for the reason that the witness for the District Board testified that the Board was never in favor of the rule as stated in such paragraph and was not interested in its inclusion in the proposed marketing rules.

Witness for the District Board testifled that the second paragraph of rule IV of Section VI should be modified so as to delete the reference to coal purchased for the performance of governmental functions and that the rule should permit the giving of quotations and options on all proposed sales of coal to the United States Government or States or political subdivisions thereof. In light of this testimony, we are of the opinion that the suggested modification should be made.

The District Board did not propose any rule providing for the filing of contracts or the reporting of commitments. All contracts are required to be filed with the Statistical Bureau by Section 4 Part Π (a) of the Act. We are of the opinion that a rule providing for the filing of a copy of every contract and of any agreement for modification thereof, within fifteen (15) business days from the date of execution, is desirable.

In order fully to inform the Commission as quickly as possible of every agreement for the sale of coal, we are also of the opinion that a report of every commitment should be filed within fifteen (15) days from the date of the making of the agreement unless the written contract itself has been filed in that period. Accordingly we are of the opinion that rule 3 of Section IV in the composite findings hereinafter set forth is reasonable and desirable.

Rule 1 of Section VII contained in Exhibit No. 187 should be clarified as hereinafter set forth in rule 1 of Section V of the composite findings. While a witness for the Board testified that in his opinion a copy of the invoice, if it covers a transaction, should be accepted as an acknowledgment of an order for the purpose of filing, we are of the opinion that such a rule is not desirable for several reasons. Section 4, Part II (a) of the Act required Code Members to report all spot orders to the Statistical Bureau. Furthermore, in order fully to effectuate the Act, it is necessary to require that all buyers of coal agree to certain conditions and in order to inform the Commission as to whether such conditions have actually been incorporated as part of the agreement, we are of the opinion that there should be filed with tive date and expiration date, and the a hearing held pursuant to Section 4 the Commission either an order or a

written confirmation thereof, upon which such conditions are endorsed.

Rule 2 (a) of Section VII should be deleted for the same reason as previously given for the deletion of the same provision in Section VI, Rule II F 2.

In the light of the testimony given by the witness with reference to Rules 2 (b) and 2 (c) of Section VII, and for the purposes of clarification, these rules have been reworded in the manner set out in rules 2 (a) and (b) of Section II of the composite findings subsequently given.

The District Board does not propose any rule expressly requiring the filing of spot orders or any written confirmation thereof. However, the Board in Rule 4 of Section VII provided that any modification of the spot order must be made in writing and filed in the same manner as an order. We are of the opinion that rule 4 of Section V of the composite findings subsequently given expressly requiring the filing of spot orders or the written confirmation thereof, and requiring that any modification of spot orders must be made in writing and filed with the Statistical Bureau in the same manner as an order, is desirable and reasonable.

The District Board in Rules 4 and 5 of Section VIII provides that where agreements for the sale of coal are entered into upon a premium and penalty basis a statement setting forth the full terms of the premium and penalty provisions shall be filed with the Statistical Bureau. We are of the opinion that as a matter of law no Code Member may enter into or perform any agreement made upon a premium or a premium and penalty basis which will permit the sale of coal at an aggregate contract price below the applicable minimum price for the coal sold and delivered after the effective date of these rules and regulations, although the buyer under any premium and penalty contract may nevertheless be entitled to a claim for substandard preparation or quality. Accordingly, rule 6 of Section VI, of the composite findings subsequently given, is, in our opinion, reasonable and desirable.

With reference to Rule 1, Section IX, the witness for the District Board said that in his opinion and in the opinion of the Board the rule should be modified as follows:

"On railroad fuel and on coal sold to industrial consumers for their own use, the date of payment shall be on or before the twenty-fifth (25th) of the month following the date of shipment."

Rule 4 of Section IX does not indicate as of what time interest at the current market rate should be charged where payment is made by note, trade acceptance, or other form of indebtedness. For the purpose of clarification, we believe the rules should be modified so as to provide that interest shall be charged from the due date of the account.

Furthermore, a discrimination appears and no provision is made for the charging of interest in the case where payment is not made, at the due date of the account, whether by default of the buyer or pursuant to the agreement for the extension of the term of credit, and where such extension of the term of credit is not evidenced by a note, trade acceptance or other form of indebtedness. We therefore find this rule is unreasonable in this respect and should be amended to include a provision for the charging of interest under any circumstances when the account is not paid at the due date thereof.

While the District Board provided in Section IX, relating to terms of payment, that the price and fair trade provisions of the Act shall not be violated by the use of terms of payment and that, in no instance, shall the term of payment be more favorable than as specifled in the rules, the District Board did not propose any specific rule making the agreement, express or implied, to extend credit for a period of longer than that authorized by the rules, a violation of the code. We are of the opinion that such a rule as set forth in paragraph 6 of Section IX of the composite findings is necessary and reasonable in order fully to effectuate the rules proposed by the District Board relating to terms of payment.

An expert witness testified that Item 7 under Rule 2 of Section X could not be answered accurately and that the only way this information could be furnished would be by guessing. The witness further stated that although the registration of crushing devices might be valuable for the information of the Commission, he was of the opinion that such registration is an administrative requirement and not necessarily a rule or regulation. We are of the opinion that Section X should be deleted.

In order more fully to effectuate the purpose of Rule 3 of Section XI and so that the Commission will be informed of all relevant facts, we are of the opinion that the statement to be filed with the Statistical Bureau, where coal is refused by consignee in transit, should state the price at which the coal was originally sold.

With reference to Rule 5 of Section XI, we are likewise of the opinion that the statement to be filed with the Statistical Bureau should be of real value to the Commission and should, accordingly, contain all relevant information which is necessary to determine whether adjustments for substandard preparation or quality have been made bona fide and not with the intention of evading prices. We are of the opinion that the statement should show, in addition to the information required in the rule as proposed by the Board, the price at which the coal was sold, the tonnage delivered, the name of the mine, the code member, date of shipment, grade and size of coal, and the destination.

We are of the opinion that rule 6 of Section XI should be modified to provide that all coal must be sold and invoiced on a price per ton basis. This modification, in our opinion, is necessary for a uniform procedure and method to govern the selling and invoicing of coal. We believe this rule is necessary or otherwise the Commission must either establish supplementary prices based simply on thermal efficiency or else undertake to a price per ton basis in order to determine whether the minimum price has been violated or evaded.

Rule 7 of Section XI provides that coal confiscated or lost in transit shall be invoiced to the carrier at the market value of the coal, but in no event at less than the minimum price therefor established by the Coal Commission. This Commission has no jurisdiction to compel the Code Member to invoice such coal at any price above the minimum price. Accordingly, this rule should be modified so as to provide that such coal shall be invoiced to the carrier at not less than the established minimum price therefor.

We are of the opinion that the second paragraph of rule 8 (e) of Section XI should be deleted for the reason that it is impractical to enforce. Likewise, rule 8 (f) of Section XI should be deleted for the reason that it creates an unreasonable discrimination.

The witness testified that he recommended an additional rule which would provide that every wholesaler, distributor or sales agent shall cause to be clearly set forth upon any form of solicitation, order, invoice and statement covering coal offered for sale or sold, the following: (1) Either the name of the producer or (2) the trade name established and generally used by the producer in designation of coal produced from the mine from which shipment was made or is to be made. Such a rule cannot be directed against distributors at this hearing, but we are of the opinion that this rule is desirable and reasonable with reference to sales agents.

The witness for District Board No. 17 testifled generally that the rules proposed by the District Board were reasonable, not inconsistent with the requirements of Section 4 of the Act, and in conformance with the standards of fair competition contained in the Act, although the witness on examination, as already stated, likewise testified that certain clarifications and modifications of such rules would, in his opinion, be desirable. Except as to such rules which we have already stated should be modifled, we are of the opinion that the rules proposed by the District Board are in accordance with the above requirements.

Accordingly, we find that the following rules and regulations incidental to the sale and distribution of coal by Code Members in District No. 17 are reasonable, not inconsistent with the requirements of Section 4 of the Act, and in

conformance with the standards of fair | lished under the provisions of Section 4, | fully set forth therein all the terms and competition established in the Act:

MARKETING RULES AND REGULATIONS INCI-DENTAL TO THE SALE AND DISTRIBUTION OF COAL BY CODE MEMBERS WITHIN DIS-TRICT NO. 17 AS PROPOSED BY DISTRICT BOARD NO. 17 AND AS APPROVED, DISAP-PROVED, OR MODIFIED FOR THE PURPOSE OF COORDINATION

Section I.—Definitions

- 1. The term "person" as used herein. includes individuals, firms, associations, partnerships, corporations, trusts, trustees, cooperatives, receivers and trustees in bankruptcy and in other legal proceedings, and any other recognized forms of business organizations.
- 2. A "sales agent" is a person who, as agent of a code member (and therefore without purchasing the coal), sells coal produced by such code member for him or on his behalf: Provided, that "sales agent" shall not include an individual (herein referred to as a "salesman") regularly and continuously employed by a code member, and who regularly devotes the major portion of his time to the solicitation of purchases of coal produced by his code member employer.
- 3. A "commission" is the total of all compensations and allowances received by a sales agent from a code member for services rendered in the sale of coal.
- 4. A "registered distributor" is a person who has been duly registered by the Coal Commission pursuant to the rules and regulations prescribed by the Commission for the administration of Section 4 II (h) of the Act.
- 5. A "spot order" is a legal obligation for the sale and purchase of coal, the delivery of which is stipulated to be made within not more than thirty (30) days from the date upon which the order was accepted.
- 6. A "contract" is a legal obligation for the sale and purchase of coal, the deliveries of which are stipulated to be made during a period longer than that specified for a spot order.
- 7. A "commitment" is the status of a contract between the time a quotation is accepted or an option is exercised and the time the contract is formally reduced to writing.
- 8. A "quotation" is an offer for the sale of coal at a price which the offerer may withdraw prior to its being acted upon by the offeree.
- 9. An "option" is an offer for the sale of coal at a price to be accepted within a time certain, during which time the offerer may not withdraw the offer without consent of the offeree.
- 10. "Coal Commission" as used herein, shall mean the National Bituminous Coal Commission established under the provisions of the Bituminous Coal Act of 1937.
- 11. "Act" as used herein, shall mean the Bituminous Coal Act of 1937.
- 12. "District Board" as used herein,

- Part I (a) of the Act.
- 13. "Statistical Bureau" shall mean. unless otherwise specifically stated, the statistical bureau of the Commission for the district in which the coal involved in any transaction is produced, or the district in which is located a mine of a code member affected by any order or regulation.
- 14. "Minimum Price" shall mean a minimum price established and made effective by the Coal Commission.
- 15. "Maximum Price" shall mean a maximum price established and made effective by the Coal Commission.
- 16. "Registration and Register" as used herein, shall refer to registration with the Coal Commission pursuant to rules and regulations prescribed by the Commission for the administration of Section 4 of the Act.
- 17. The term "producer" includes all individuals, firms, associations, corporations, trustees, and receivers engaged in the business of mining coal.
- 18. The terms "reconsignment" and 'diversion" as used herein shall mean the change in the original consignee or in the destination or route.
- 19. A "code member" means a producer who has accepted and holds membership in the Bituminous Coal Code promulgated under the Bituminous Coal Act of 1937.
- 20. "Coal" as used herein shall mean bituminous coal.
- 21. The term "bituminous coal" includes all bituminous, semi-bituminous, and sub-bituminous coal and shall exclude lignite, which is defined as a lignitic coal having calorific value in British thermal units of less than seven thousand six hundred per pound and having a natural moisture content in place in the mine of 30 per centum or more.
- 22. The term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or other-

Section II.—Sales Agents

- 1. All appointments of sales agents by code members or their agents or authorized representatives, and the terms and conditions of such appointments shall be subject to the Marketing Rules and Regulations from time to time established by the Coal Commission.
- 2. Each code member shall be responsible for the compliance by all his sales agents and agents and employees of sales agents with the provisions of the Bituminous Coal Code and of all rules and regulations, promulgations and determinations of the Coal Commission.
- 3. (A) Every contract for the appointment of a sales agent by Code Members or by agents or authorized representatives of Code Members, or any modifica-

- conditions of such contract, including the amount or basis of the sales agent's commission. Certifled copies of all such agency contracts entered into on or prior to the effective date of the establishment of these rules and regulations and in effect on such date, shall be filed by the Code Member with the Statistical Bureau, or Bureaus, within twenty (20) business days after such date.
- (B) Certified copies of all contracts appointing sales agents or of agreements modifying any sales agency contract, entered into subsequent to the effective date of these rules and regulations, shall be similarly filed by the Code Member within ten (10) business days after the date upon which such contracts or agreements have been entered into.
- (C) Upon the expiration, termination, or rescission of any sales agency contract. the Code Member principal shall make a report thereof to the Statistical Bureau, or Bureaus, within ten (10) business days after the date of such expiration, termination, or rescission.
- 4. (A) As to all coal sold by a Code Member otherwise than through a sales agent or through an employee regularly employed as a salesman by the Code Member, such Code Member shall, not later than the fifteenth day of each month, file with the Statistical Bureau, or Bureaus, a list of all persons through whom, directly or indirectly, any such coal was sold during the preceding calendar month, with a statement of the duration and character of their employment, the tonnage sold by, and the rate and amount of compensation paid to, each of them.
- (B) Not later than the fifteenth day of each month, each Code Member shall also file with the Statistical Bureau, or Bureaus, similar information obtained from his sales agents concerning sales of coal made during the preceding calendar month, by the sales agents' representatives and employees other than salesmen regularly employed.
- (C) Not later than the fifteenth day of each month, each Code Member shall also file with the Statistical Bureau, or Bureaus, a statement showing the names and addresses of distributors to whom the Code Member or his sales agents sold coal during the preceding calendar month, the tonnage sold, and the amount of discount allowed to each such distributor.
- 5. A list showing the names and addresses of sales agents and the Code Members for whom such agents act shall be published by the Coal Commission from time to time.
- 6. All agency contracts and other information filed by Code Members in conformity with the foregoing regulations, other than the names and addresses of sales agents, shall be held by the Coal Commission as the confidential records of said parties and shall not be made public without the consent of the Code shall mean any District Board estab- tion thereof, shall be in writing, and shall Member from whom the same shall have

been obtained, except where such disclosure is required in any proceeding before the Coal Commission by way of enforcement of the Act or upon the order of any court of competent jurisdiction.

- 7. From and after twenty (20) business days following the effective date of these Marketing Rules and Regulations no Code Member or sales agent of Code Member shall allow or pay, directly or indirectly, any commission or compensation to any sales agent.
- (a) Unless the contract of agency shall have been filed with the Coal Commission, as hereinbefore required, and
- (b) Unless the sales agent shall have agreed, in writing, with the Code Member to conform to and observe the minimum and maximum prices and Marketing Rules and Regulations established by the Coal Commission and the Fair Trade Practice Provisions of the Act, as well as all proper Orders of the Commission, and
- (c) Unless the sales agent shall have in good faith complied with the agreement as in paragraph (b) above provided.
- 8. No commission shall be paid to a sales agent by a Code Member where the coal is delivered or sold to any person who owns such sales agent or who, financially or otherwise, controls such agent.
- 9. Every sales agent shall cause to be clearly set forth upon any form of solicitation, order, invoice and statement covering coal offered for sale or sold, the following:
- (1) Either the name of the producer, or
- (2) The trade name established and generally used by the producer in designation of coal produced from the mine from which shipment was made or is to be made.

Section III.—Discounts

1. No Code Member or sales agent of a Code Member shall pay or allow any discount from minimum prices to any person unless such person has been registered by the Coal Commission as authorized to receive such discount at the time of the sale.

Section IV .- Quotations, Options and Contracts

1. Subject to further order of the Coal Commission no Code Member or sales agent of a Code Member shall enter into any agreement or order for the sale of coal providing for delivery for a period in excess of that authorized for a spot order, and no prices shall be less than the applicable minimum prices in effect at the time of the making of the agreement: Provided, however, that contracts for periods not exceeding one (1) year may be made with agencies of the Federal Government or with such agencies of State or local governments, as are required by law to purchase coal for periods in excess of thirty (30) days, at the following applicable minimum prices: lowing provisions, the meaning and ef- be filed by the Code Member or his sales

- thirty (30) days of the contract, at not altered by any other provision of the less than the applicable minimum prices contract: in effect at the time of the making of the agreement;
- (b) For deliveries thereafter at not less than the applicable minimum prices in effect at the time of delivery if such price is higher than the contract price.
- In the case of Governmental Agencies, options may be given for a period not exceeding forty-five (45) days. Subject to further order of the Coal Commission, no option for the sale of coal may be given, except as herein specifically pro-
- 2. Upon the revocation or suspension of Rule 1 of this Section, Code Members or sales agents of Code Members may thereafter enter into contracts for the sale and delivery of coal at prices not less than the minimum price in effect at the time of the making of the contract, upon the following conditions:
- A. No contract for the sale of coal shall provide for delivery over a period in excess of twelve (12) months, except by special permission from the Coal Commission upon a showing of the necessity of meeting long term contract competition of oil, gas, or other fuels or forms of power, or for such other reasons as the Commission may deem appropriate in order to further the effectual administration of the Act.
- B. No contract for the sale of coal shall provide for deliveries to commence at a time later than ninety (90) days from the date upon which such contract was entered into.
- C. All contracts shall be in writing and shall express the entire agreement between the parties. The contract shall clearly state the date of execution, the effective date, the expiration date, the price agreed upon, the terms of payment. the size and grade of coal sold, the number of cars or tonnage to be shipped, the name of the originating mine, and, where the coal is purchased for consumption. the use to which the coal is to be applied. Contracts may also be made either (a) calling for a buyer's entire requirements or a stated percentage of his requirements, showing the maximum tonnage to be shipped thereunder, or (b) covering a buyer's requirements and specifying the tonnage to be shipped with an allowable overshipment or undershipment of not exceeding twenty (20) percent of the tonnage specified.

The provisions of the rule stated in the foregoing paragraph relating to quantity shall not apply to contracts made with agencies of the Federal, State or local Governments.

- D. Every contract shall express the entire agreement between the parties and no modification thereof shall be made except by written agreement which shall conform to all the requirements set forth in these rules and regulations.
- E. Each contract shall contain the fol-

(a) For deliveries during the first fect of which shall not be changed or

- "(1) This contract and the performance of all provisions thereof are expressly subject to the Bituminous Coal Act of 1937 and the lawful orders and regulations issued thereunder by the National Bituminous Coal Commission.
- "(2) No shipment consigned to any destination point may be diverted or reconsigned without the consent of the seller confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the minimum price prescribed for such coal for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.
- "(3) The coal shipped pursuant to this contract is sold and purchased upon the following conditions:
- "(a) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein;
- "(b) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than applicable minimum price for such coal at time of diversion, for the use to which it is actually applied."
- F. In any case where a contract is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in Item E (2) of rule 2 of this section without first securing the consent of the Code Member producing such coal to be confirmed in writing.
- G. Upon the revocation or suspension of Rule 1 of this Section, quotations and options for the sale of coal may be given for a period not exceeding fourteen (14) days. If the minimum price is increased beyond the quoted price within such fourteen (14) days, any quotation or option not accepted or exercised prior to the effective date of the price change shall, without notice, be considered withdrawn and no longer effective. Every quotation or option shall contain a provision to the foregoing effect and shall further stipulate that any contract or spot order entered into thereunder shall be subject to these Marketing Rules and Regulations.
- H. The provisions of this Rule 2/G shall not apply to sealed bids on business of the United States Government or States or Political subdivisions thereof, in which cases quotations and options at not less than the minimum price in effect at the time the bid is filed may be given for a period not exceeding fortyfive (45) days from the final filing date of bids.
- 3. A report of every commitment shall

agent with the Statistical Bureau or Bureaus within fifteen (15) business days from the date of the making of the agreement. Such reports shall set forth all the terms and conditions of the commitment. A true copy of every contract and of any agreement for modification thereof shall be filed with the Statistical Bureau within fifteen (15) business days from the date of execution of such contract or agreement for modification: Provided, however, that a report of the commitment need not be filed if a copy of the contract is filed within fifteen (15) business days.

Section V.—Spot Orders

- 1. A spot order shall be in writing or confirmed in writing within five (5) business days from the date of the making thereof.
- 2. Each spot order shall be subject to the following conditions which shall either be endorsed upon the form of the order or upon the written confirmation thereof by the Code Member or his sales agent, the meaning and effect of which shall not be changed or altered by any other provisions of the order:
- "(a) No shipment consigned to any destination may be diverted or reconsigned without the consent of the seller confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the minimum price prescribed for such coal for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.
- "(b) The coal shipped pursuant to this order is sold and purchased upon the following conditions:
- "(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein:
- "(2) In case of diversion by the buyer to a use other than that stated herein. the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied.
- "(c) If shipments called for by this order are not completed within thirty (30) days from the date of this order, the unfulfilled portion of the order shall be cancelled and no delivery of such tonnage shall be made."
- 3. In any case where a sale is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in Item 2 (a) of this section without first securing the consent of his Code Member principal to be confirmed in writing.
- 4. All the terms and conditions of a sale of coal must be fully and expressly set forth either in the order or in the agreements entered into prior to the efwritten confirmation thereof, and such

required by Rule 2 (c) of Section IV of these marketing rules and regulations. Within ten (10) business days after the date of the making of the spot order or date of the written confirmation thereof. the Code Member or his sales agent shall file with the Statistical Bureau or Bureaus a copy of such spot order or confirmation. Any modification of a spot order must also be made in writing and filed with the Statistical Bureau or Bureaus in the same manner.

Section VI.—Use of Coal Analyses

- 1. No analysis of coal shall be utilized by a Code Member of his sales agent, in selling or offering for sale any coal produced by the Code Member, unless such Code Member shall have previously filed with the Statistical Bureau of the Coal Commission and the District Board for the District in which the coal is produced, copies of such analysis, together with a certificate setting forth the time and manner of obtaining the sample analyzed, the name and address of the person or firm making the analysis and stating that such analysis is truly representative of the grade and size of coal as regularly produced by the code member. Each such analysis shall be not less than a proximate analysis showing ash, volatile matter, fixed carbon, sulphur and British Thermal units. Each analysis shall further show whether made on an "as received" or moisture "free" basis and if on an "as received" basis, the analysis shall include moisture content.
- 2. All analyses so filed shall be subject to inspection at the office of the Statistical Bureau at any time during office hours by any interested person, and may be used by the District Board and the Coal Commission in determining from time to time proper classifications of the coals produced by the code member.
- 3. Any analysis of the coal of a Code Member made by or on behalf of a consumer and accepted by the Code Member as the basis for an adjustment of price under any contract or order, shall be filed by the Code Member with the proper Statistical Bureau and District Board, within ten (10) days after such adjustment is made and shall be subject to the provisions of Rule 2 herein.
- 4. No agreement or order for the sale of coal produced by a Code Member, made upon a premium and penalty basis, shall be entered into or accepted by a Code Member unless the analysis upon which the premium and penalty clause is based has been previously filed as required in Rule No. 1. Such analysis shall be accompanied by a statement setting forth in full terms of the premium and penalty provisions of the proposed contract or order.
- 5. In the case of premium and penalty fective date of these regulations, and

shall specifically contain all the terms | Code Member shall file a statement containing the information required under Rule No. 4, within fifteen (15) days from such effective date.

> 6. From and after the effective date of these rules and regulations, no Code Member shall enter into or perform any agreement made upon a penalty or a premium and penalty basis which will permit the sale of coal at an aggregate. contract price below the applicable minimum price established by the Coal Commission for the coal sold and delivered upon such agreement subsequent to said effective date: Provided, that where a Code Member has entered into an agreement made upon a penalty or a premium and penalty basis, this rule shall not be considered as affecting any claim that the buyer might otherwise have had for substandard preparation or quality under Section IX of these marketing rules and regulations.

Section VII.—Terms of Payment

The price and fair trade practice provisions of the Act shall not be evaded or violated by a Code Member, or his sales agent through the use of terms of payment, and in no instance shall terms of payment be more favorable than the following:

- 1. On railroad fuel and on coal sold to industrial consumers for their own use, the date of payment shall be on or before the twenty-fifth (25th) of the month following the date of shipment.
- 2. Other coals shall not be sold on more favorable terms of payment than net cash thirty (30) days from date of shipment.
- 3. Invoices shall be paid in full in United States currency, or funds equivalent thereto, not later than the due date.
- No portion of the sale price may be withheld by agreement between the buyer and the seller based upon any unadjusted claim of the buyer.

No sales, delivery, or offer for sale of coal shall be made upon any condition, expressed or implied, that any portion of the sale price may be withheld by the buyer, or deposited in escrow, or made subject to rebate or refund by the seller, pending or based upon a determination of the constitutionality of any provision of the Act, of the jurisdiction of the Coal Commission, or of the validity or applicability of any order of the Coal Commission.

- 4. Where payment is made by note. trade acceptance, or other form of indebtedness, or where payment is made under any circumstances after the due date of the account, the seller shall charge and the buyer shall pay interest from and after the due date of the account at the current rate in the locality to which the coal is shipped to the
- 5. Freight on rail shipments shall not be paid by a Code Member or his sales agent except to prepay stations as puborder or written confirmation thereof claimed to be continuing in effect, the lished in current railway tariffs or to

political subdivisions thereof. Where ing an authentic copy of the buyer's freight is thus prepaid, the amount thereof shall immediately upon receipt of freight bill or notice of sight draft payment, be invoiced to the buyer for immediate payment.

6. The agreement by a Code Member, express or implied, to extend credit for a period longer than that authorized by these rules and regulations, with the effect of violating the price provisions or the unfair methods of competition of the Act, shall constitute a violation of the Code.

Section VIII.—Miscellaneous

- 1. No deduction or allowance from invoice prices shall be granted by any code member or his sales agent to any purchaser for advertising.
- 2. Code members (or their agents or representatives) either individually or collectively, with or without financial participation by retailers of coal, may conduct advertising campaigns seeking to increase the use of coal. The amount of expenditures incurred by a code member, his agent or representative for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.
- 3. Where coal is refused by a consignee in transit or at destination, the Code Member may sell the same at the best obtainable price: Provided, that in each case the code member shall file with the Statistical Bureau, within five (5) days from the date of such resale a statement giving the name and address of the consignee and the reasons for the refusal, the price at which the coal was originally sold, the name and address of the purchaser upon resale and the price received by the seller upon resale, a copy of the carrier's notice of refusal or notice of reconsignment and such other pertinent facts as may be offered in proof of the necessity of such resale, and that in making such resale the provisions of the Code and the Marketing Rules and Regulations of the Coal Commission other than as to price have not been violated or evaded.
- 4. All Code Members shall promptly furnish to the Statistical Bureau of the Coal Commission for the District in which the coal originated, full reports of all reconsignments and shall authorize the carrier making such reconsignments to furnish complete information thereon to such Statistical Bureau.
- 5. No allowance shall be made for any shipment of coal of substandard preparation or quality unless formal claim duly executed by or on behalf of the buyer and verified by affidavit setting forth the amount claimed by way of allowance and reasons for the claim is filed with the Code Member or his sales agent within ten (10) days after the receipt of the coal.

The Code Member or sales agent with shall immediately notify the Statistical forms provided by the Commission and funds, credits, or unearned discounts, or

claim together with a statement of the producer's views as to the validity of the claim, setting forth:

- (a) The name and address of the consignee and the reason for the allowance.
- (b) The amount of allowance or adjustment made.
- (c) The price at which the coal was
- (d) The tonnage delivered.
- (e) The name of the mine and the Code Member.
 - (f) Date of Shipment.
- (g) Grade and size of coal and destination.
- (h) A statement that the adjustment has not been made with the purpose or intent of evading the price or fair trade practice provisions of the Act.
- 6. The screening of mine run or rescreening of other grades of coal sold and billed as such for the buyer's account for the purpose of keeping the resultant products separate in the shipment thereof is prohibited. All coal must be sold and invoiced on a price per ton basis and under the designation shown therefor in the price schedule published by the Coal Commission.
- 7. All coal confiscated or lost in transit shall be invoiced to the carrier at not less than the minimum price established for such coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or loss, whichever may be the higher.
- 8. No substitution may be made upon any spot order or contract, of any grade or size of coal taking a minimum price higher than the price specified in such order or contract, except upon the following conditions:
- (a) The proposed substitution shall not be an express or implied condition of the order or contract.
- (b) The coal substituted must be coal which the Code Member has already produced and loaded into transportation facilities and which cannot be sold promptly by the exercise of the usual sales effort, such substitution to be limited to a specific tonnage for shipment on a specific order and from a specific
- (c) The substitution must be reasonably necessary as an emergency measure in order to continue operation of the mine of the Code Member.
- (d) The substitution shall be acceptable to the purchaser of the coal, and shall not be made with the purpose or effect of conferring any advantage on the purchaser or securing any preference or advantage for the Code Member over his competitors.
- (e) Such substitution may be made designated representative of the Commission and in each instance formal whom such claim for allowance is filed application therefor shall be made upon form or by any device of rebates, re-

the United States Government, States or | Bureau and the District Board, furnish- | permits shall be issued prescribing the conditions of substitution in each case approved.

- (f) A monthly report of substitution permits shall be mailed by Code Members to the office of their Board. The Commission may from time to time publish the essential facts as to all substitution permits granted.
- (g) In each case of coal shipped under a substitution permit each invoice shall specifically show the permit number and the size and grade of coal substituted.
- 9. Failure to file information required by the within Marketing Rules and Regulations or the filing of false information, wilfully made, will subject the party failing to file the information required, or the party so filing, to the penalties of the Act and other penalties imposed by law.
- 10. These Marketing Rules and Regulations are subject to revision and amendment by further order of the Coal Commission.

Section IX.—Unfair Methods of Competition

As provided in Section 4. Part II (i) of the Act, the following practices with respect to coal shall be unfair methods of competition and shall constitute violations of the code:

- 1. The consignment of unordered coal, or the forwarding of coal which has not actually been sold, consigned to the producer or his agent: Provided, however, that coal which has not actually been sold may be forwarded, consigned to the producer or his agent at rail or track yards, tidewater ports, river ports, or lake ports, or docks beyond such ports, when for application to any of the following classes: Bunker coal, coal applicable against existing contracts, coal for storage (other than in railroad cars) by the producer or his agent in rail or track yards or on docks, wharves, or other yards for resale by the producer or his agent.
- 2. The adjustment of claims with purchasers of coal in such manner as to grant secret allowances, secret rebates, or secret concessions, or other price discrimination.
- 3. The prepayment of freight charges with intent to or having the effect of granting a discriminatory credit allow-
- 4. The granting in any form of adjustments, allowances, discounts, credits, or refunds to purchasers or sellers of coal, for the purposes or with the effect of altering retroactively a price previously agreed upon, in such manner as to create price discrimination.
- 5. The predating or postdating of any invoice or contract for the purchase or sale of coal, except to conform to a bona only with the prior approval of a duly fide agreement for the purchase or sale entered into on the predate.
 - 6. The payment or allowance in any

the extension to certain purchasers of rules and regulations were properly sub-definition of a "spot order", as proposed services or privileges not extended to all purchasers under like terms and condi- trict and that no protests concerning tions, or under similar circumstances.

- 7. The attempt to purchase business. or to obtain information concerning a competitor's business by concession, rules and regulations, and later subgifts, or bribes.
- 8. The intentional misrepresentation of any analysis or of anlyses, or of sizes, or the intentional making, causing, or permitting to be made, or publishing, of any false, untrue, misleading, or deceptive statement by way of advertising. invoicing, or otherwise concerning the size, quality, character, nature, preparation, or origin of any coal bought, sold, or consigned.
- 9. The unauthorized use, whether in written or oral form, of trade-marks, trade names, slogans, or advertising matter already adopted by a competitor, or any deceptive approximation
- 10. Inducing or attempting to induce, by any means or device whatsoever, a breach of contract between a competitor and his customer during the term of such contract.
- 11. Splitting or dividing commissions, brokers' fees, or brokerage discounts, or otherwise in any manner directly or indirectly using brokerage commissions or jobbers' arrangements or sales agencies for making discounts, allowances, or rebates, or prices other than those determined under this Act, to any industrial consumer or to any retailers. or to others, whether of a like or different class.
- 12. Selling to, or through, any broker, jobber, commission account, or sales agency, which is in fact or in effect an agency or an instrumentality of a retailer or an industrial consumer or of any organization of retailers or industrial consumers, whereby they or any of them secure either directly or indirectly a discount, dividend, allowance, or rebates, or a price other than that determined in the manner prescribed by this Act.
- 13. Employing any person or appointing any sales agent, at a compensation obviously disproportionate to the ordinary value of the service or services rendered, and whose employment or appointment is made with the primary intention and purpose of securing preferment with a purchaser or purchasers of coal.

MINIMUM PRICE AREA NO. 6-DISTRICT BOARD No. 18

PROPOSED MARKETING RULES AND REGULATIONS

A witness for District Board No. 18, properly qualified as an expert in the marketing of coal in that District, introduced into evidence as Exhibit No. 192, the marketing rules and regulations proposed by District Board No. 18 in compliance with Commission Order No. 244. This witness testified that these cation is a desirable one and that the "spot order" in Section I.

mitted to Code Members within said Dissuch proposals were received from Code Members. Accordingly, the District Board, on August 19, 1938, adopted said mitted them to the Commission.

The witness testified that the definitions of "general sales agent" and "sales agent" could, in his opinion, be clarified and still stay within the meaning of the District Board by combining the two definitions as follows:

"A Sales Agent is a person who as agent, in law or in fact, sells coal for or on behalf of a Code Member."

Therefore, we are of the opinion that the above-mentioned definitions should be so combined and modified.

The witness testified that, in his opinion, registration of persons entitled to receive discounts is a matter of procedure and not a proper proposal under marketing rules and regulations. However, it was the witness' opinion that there should be a requirement of such registration. Order No. 244 directed various District Boards to propose rules and regulations incidental only to the sale and distribution of coal by Code Members. Any definitions purporting to define what persons come within the term "distributor", as used in Section 4 II (h) of the Act, is improperly submitted in this hearing and accordingly the definition of a "wholesaler" as proposed by the District Board in Section I, paragraph 6, should be deleted, and the following definition of a "registered distributor" should be substituted:

"A 'registered distributor' is a person who has been duly registered by the Coal Commission pursuant to the rules and regulations prescribed by the Commission for the administration of Section 4 II (h) of the Act."

We are of the opinion that the definition of a "wholesale discount" is not a proper subject for consideration in this hearing, but should be determined in a hearing held pursuant to Section 4 II (h) of the Act.

The term "industrial consumer" appears only in a section which has been deleted for the reasons later set forth. Therefore, this definition is superfluous and should be deleted.

The definition of a "retail dealer" should be deleted for the reasons hereinbefore set forth in the findings of fact for District No. 17.

The witness recommended that the definition of a "spot order" be clarified as follows:

"A 'spot order' is a legal obligation for the sale and purchase of coal, the deliveries of which are stipulated to be made within not more than thirty (30) days from the date upon which the order was accepted."

We are of the opinion that this modifi-

by District Board No. 18, should be so modified.

The witness testified that the definition of "public institutions" was, in his opinion, superfluous. Moreover, the only section in which this definition appears has been deleted for reasons later set forth and, therefore, we are of the opinion that this definition should be deleted.

We are of the opinion that definitions 13 to 20 contained in Section I of the composite findings, hereinafter given, are reasonable and desirable. The District Board did not define these terms although they appear in various rules proposed by the Board.

The District Board for District No. 18 did not propose that contracts of sales agents should be filed with the Statistical Bureau of the Commission.

The witness testified that, in his opinion, some regulation of that character would be decidedly helpful in carrying out the purposes of the Act.

We are of the opinion that the filing of sales agency contracts with the Statistical Bureau is a necessary requirement in order to determine whether or not such contracts come within the unfair trade practices of the Act and we. accordingly, modify Section II in the manner set forth in the composite findings subsequently given.

As previously stated, the witness testifled that registration of persons entitled to receive discounts is a procedural matter and should not be contained in the marketing rules and regulations.

The witness further stated that there should be some requirement of registration before such discounts could be granted. Furthermore, the stated that rules pertaining to discounts should properly be proposed in the discount hearing, which the Commission has opened and which has, at the present time, been continued. Accordingly, for these reasons, and for the reasons hereinbefore set forth in the findings of fact for District No. 17, we are of the opinion that Sections III, IV and V of the proposed rules and regulations of District No. 18, should be combined into one section as follows:

Discounts

- 1. No Code Member or sales agent of a Code Member shall pay or allow any discount from minimum prices to any person unless such person has been registered by the Coal Commission as authorized to receive such discount at the time of the sale.
- 2. Code Members or their sales agents may allow discounts from minimum prices on sales of coal to registered distributors, not in excess of the maximum discount or price allowances prescribed by the Coal Commission upon such sales. Only one such discount may be allowed on any such sale.

Section VII, entitled "spot sales," should be modified in accordance with the modification of the definition of

the sale of coal below minimum price by absorbing transportation charges. Accordingly, this rule should be deleted and considered separately in a hearing held pursuant to Section 4 II (g) of the Act, which prohibits such absorption.

We are of the opinion that the fourth paragraph of Section IX should be modified so as to provide that all coal must be sold and invoiced on a price per ton basis. This modification, in our opinion, is necessary for a uniform procedure of method to govern the selling and invoicing of coal.

We are of the opinion that the paragraph relating to "Use of Crushers" in Section IX entitled "Miscellaneous" should be deleted because of illegality.

The witness for District Board No. 18 testified generally that the rules proposed by the District Board were reasonable, not inconsistent with the requirements of Section 4 of the Act, and in conformance with the standards of fair competition contained in the Act, although the witness, on examination, as already stated, likewise testified that certain clarifications and modifications of such rules would, in his opinion, be desirable. Except as to such rules which we have already stated should be modified, we are of the opinion that the rules proposed by the District Board are in accordance with the above requirements.

Accordingly, we find that the following rules and regulations, incidental to the sale and distribution of coal by Code Members in District No. 18, are reasonable, not inconsistent with the requirements of Section 4 of the Act, and in conformance with the standards of fair competition established in the Act:

MARKETING RULES AND REGULATIONS INCI-DENTAL TO THE SALE AND DISTRIBUTION OF COAL BY THE CODE MEMBERS WITHIN DISTRICT NO. 18 AS PROPOSED BY DISTRICT BOARD NO. 18 AND AS APPROVED, DISAP-PROVED, OR MODIFIED FOR THE PURPOSE OF COORDINATION

Section I.—Definitions

- 1. The term Person as used herein includes individuals, firms, associations, partnerships, corporations, trusts, trustees, trustees in bankruptcy, receivers, and all other recognized forms of business organizations.
- 2. A Code member as used herein designates one who is engaged in the operation of a coal mine and in the sale of coal produced therefrom and who has signed the Code and maintained his membership under Section 4 of the Bituminous Coal Act of 1937.
- 3. A Sales agent is a person who as agent, in law or in fact, sells coal for or on behalf of a Code Member.
- A Commission is the total compensation granted by a Code Member to a Sales Agent for the services rendered by such agent.
- 5. A Registered distributor is a person who has been duly registered by the Coal Commission pursuant to the rules and subject to the Marketing Rules and Reg- ing Rules and Regulations established

- Rule 2 (a) of Section VIII pertains to | regulations prescribed by the Commission | ulations from time to time established for the administration of Section 4 II (h) of the Act.
 - 6. A Spot order is a legal obligation for the sale and purchase of coal, the deliveries of which are stipulated to be made within not more than thirty (30) days from the date upon which the order was accepted.
 - 7. A Contract is an agreement for the sale of coal covering shipments to be made for a longer period than that specified for a SPOT ORDER.
 - 8. A Commitment is the status of a contract between the time a quotation is accepted or an option is exercised and the time the contract is formally reduced to writing.
 - 9. A Quotation is an offer for the sale of coal which the offerer may withdraw to its being acted upon by the offeree.
 - 10. An Option is an offer for the sale of coal, to be accepted within a time certain, during which time the offerer may not withdraw the offer without consent of the offeree.
 - 11. Minimum price shall mean a minimum price established and made effective by the Coal Commission.
 - 12. Maximum Price shall mean a maximum price established and made effective by the Coal Commission.
 - 13. Coal Commission as used herein, shall mean the National Bituminous Coal Commission established under the provisions of the Bituminous Coal Act of 1937.
 - 14. Act as used herein shall mean the Bituminous Coal Act of 1937.
 - 15. District Board as used herein, shall mean any District Board established under the provisions of Section 4, Part I (a) of the Act.
 - 16. The terms reconsignment and diversion as used herein shall mean the change in the original consignee or in the destination or route.
 - 17. The term transportation facilities means railroad cars, ships, barges, trucks, or any other facilities used or useful in the transportation of coal.
 - 18. Coal as used herein shall mean bituminous coal.
 - 19. The term bituminous coal includes all bituminous, semi-bituminous, and sub-bituminous coal and shall exclude lignite, which is defined as a lignitic coal having calorific value in British thermal units of less than seven thousand six hundred per pound and having a natural moisture content in place in the mine of 30 per centum or more.
 - 20. The term control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Section II.—Sales Agents

1. All appointments of sales agents by code members or their agents or authorized representatives, and the terms and conditions of such appointments shall be

by the Coal Commission.

- 2. Each code member shall be responsible for the compliance by all his sales agents and agents and employees of sales agents with the provisions of the Bituminous Coal Code and of all rules and regulations, promulgations and determinations of the Coal Commission.
- 3. (A) Every contract for the appointment of a sales agent by Code Members or by agents or authorized representatives of Code Members, or any modification thereof, shall be in writing, and shall fully set forth therein all the terms and conditions of such contract, including the amount or basis of the sales agent's commission. Certified copies of all such agency contracts entered into on or prior to the effective date of the establishment of these rules and regulations and in effect on such date, shall be filed by the Code Member with the Statistical Bureau, or Bureaus, within twenty (20) business days after such date.
- (B) Certified copies of all contracts appointing sales agents or of agreements modifying any sales agency contract, entered into subsequent to the effective date of these rules and regulations, shall be similarly filed by the Code Member within ten (10) business days after the date upon which such contracts or agreements have been entered into.
- (C) Upon the expiration, termination, or rescission of any sales agency contract. the Code Member principal shall make a report thereof to the Statistical Bureau, or Bureaus, within ten (10) business days after the date of such expiration, termination, or rescission.
- 4. A list showing the names and addresses of sales agents and the Code Members for whom such agents act shall be published by the Coal Commission from time to time.
- 5. All agency contracts filed by Code Members in conformity with the foregoing regulations, other than the names and addresses of sales agents, shall be held by the Coal Commission as the confidential records of said parties and shall not be made public without the consent of the Code Member from whom the same shall have been obtained, except where such disclosure is required in any proceeding before the Coal Commission by way of enforcement of the Act or upon the order of any court of competent jurisdiction.
- 6. From and after twenty (20) business days following the effective date of these Marketing Rules and Regulations no Code Member or sales agent of Code Member shall allow or pay, directly or indirectly, any commission or compensation to any sales agent
- (a) Unless the contract of agency shall have been filed with the Coal Commission, as hereinbefore required, and
- (b) Unless the sales agent shall have agreed, in writing, with the Code Member to conform to and observe the minimum and maximum prices and Market-

by the Coal Commission and the Fair | various cost factors involved, subject to Trade Practice Provisions of the Act, as well as all proper Orders of the Commission, and

(c) Unless the sales agent shall have in good faith complied with the agreement as in paragraph (b) above pro-

Section III.—Discounts

- 1. No Code Member or sales agent of a Code Member shall pay or allow any discount from minimum prices to any person unless such person has been registered by the Coal Commission as authorized to receive such discount at the time of the sale.
- 2. Code Members or their sales agents may allow discounts from minimum prices on sales of coal to registered distributors, not in excess of the maximum discount or price allowances prescribed by the Coal Commission upon such sales. Only one such discount may be allowed on any such sale.

Section IV.—Quotations and Options

- 1. Quotations and options for the sale of coal may be given for a period not exceeding fourteen (14) days. If the Code price is increased beyond the quoted price within such fourteen days and the quotation or option shall not have been accepted or exercised at that time, the quotation or option thereupon shall become null and void. Every quotation and option shall contain a provision to the foregoing effect. These provisions do not apply to sealed bids on Federal, State, County, Municipal or Township business.
- 2. Every quotation and option shall contain a provision that it is subject to the conditions and provisions specified in the Section hereof captioned Contracts.
- 3. Acceptances of quotations and exercise of options must be in writing. They shall then have the status of commitments and shall be filed with such agency as the Coal Commission may prescribe.

Section V.—Spot Sales

1. A Spot Order is a legal obligation for the sale and purchase of coal, the deliveries of which are stipulated to be made within not more than thirty (30) days from the date upon which the order was accepted.

Section VI.—Contracts

1. (a) To further the objectives of subsection (a) of Part II-Marketing, of Section 4 of the Act, every contract shall contain the following provisions (whose meaning and effect shall not intentionally be changed or altered by any other provision of the contract):

"It is agreed that the purchasing price for all shipments made after an increase or decrease in either wage rates or hours per day or in hours per week, shall be increased or decreased proportionately in the exact amount determined by the District Board after full consideration of the increase the use of coal.

the approval of the same by the National Bituminous Coal Commission, provided, that the price specified herein shall not be so varied unless the increase or decrease in wage rates or in hours of work is a part of a general increase or decrease in wage rates or in hours of work occurring in the District in which the mine producing the coal is located; likewise, any increase or decrease in the cost of production, caused by the imposition, or revocation, by State or Federal statutes, of a direct tax on coal, or on the sale or on the mining thereof, or by subsequent changes in the rate of such tax, or by any other regulations, State or Federal, increasing or decreasing the cost of production, shall correspondingly increase or decrease said price of coal on any tonnage thereafter shipped thereunder."

- (b) After the effective date of any such general increase or decrease, a Code member shall increase or decrease all invoices by the amount determined by the District Board (subject to the approval of the same by the Coal Commission as provided in the preceding paragraph), and with respect to any coal shipped subsequent to said effective date and already invoiced at the price previously in effect, a Code member shall promptly issue a debit or credit memorandum, as the case may be, for the amount of any such increase or decrease.
- 2. Every contract shall contain the following clauses:
- "(a) If any shipment consigned to any destination point be reconsigned en route or otherwise to any other destination point, notice of such reconsignment shall be given by the Buyer to the Code member who produced and sold such coal, and in case of any such reconsignment the Code member shall charge and the buyer shall pay not less than the Code price prescribed for such coal for delivery to the destination point to which such shipment shall be actually delivered.
- "(b) The coal covered by this contract is to be used only in the plant or plants of the Buyer named herein and for the use stated, and is not to be sold or diverted by the Buyer to other destination or to other purposes without the consent of the Seller. If so diverted the Seller shall charge and the Buyer shall pay not less than the Code price prescribed for such coal for delivery to the destination point to which such shipments shall be actually delivered."

Section VII.-Miscellaneous

No deduction or allowance from invoice prices shall be granted by any code member or his sales agent to any purchaser for advertising.

Code members (or their agents or representatives) either individually or collectively, with or without financial participation by retailers of coal, may conduct advertising campaigns seeking to

The amount of expenditures incurred by a code member, his agent or representative for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.

Resale of coal refused in transit or at destination.-Where coal is refused by consignee in transit or at destination. the shipper may sell the same at less than the Code price; provided, that in all cases the shipper shall file with the agency designated by the Commission, (1) a statement giving the name of the consignee and the reasons for refusal: (2) a copy of carrier's notice of refusal or notice of reconsignment; (3) the price received by the shipper for the coal so sold; and (4) a statement that in making such sale the shipper has not departed from any provisions of the Code or of the Rules and Regulations of the District Board other than as to price.

Allowance for substandard preparation or quality.--Where an allowance is demanded by the consignee on any shipment that is claimed to be of substandard preparation or quality, the shipper may settle with the consignee at less than the Code price; provided, that in all cases the shipper shall file with the agency designated by the Commission, (1) a statement giving the name of the consignee and the reason for the request for the allowance; (2) the amount of allowance or adjustment made by the shipper; (3) a statement that in making this adjustment the shipper has not departed from any provision of the Code or of the Rules and Regulations of the District Board other than as to price.

Screening for buyer's account.-The screening of mine run or other grades sold and billed as such, for the Buyer's account, for the purpose of keeping the resultant products separate in the shipment thereof, is prohibited. All coal must be sold and invoiced on a price per ton basis and under the designation shown therefor in the price schedule published by the Coal Commission.

Substitution.—No substitution of grades or sizes of coal carrying a higher Code price may be made on spot orders or contracts, unless authorized by the District Board or by a committee thereof duly created for that purpose. Requests for permission to make substitutions shall be submitted to the Statistical Bureau in writing and shall be approved only upon satisfactory evidence that such substitution is necessary as a temporary and emergency measure and will not result in unfair advantage to either the Code member or the Buyer. Upon approval of a request for substitution, the Statistical Bureau will issue a permit to the Code Member in each instance, which permit shall be limited to a maximum number of tons for shipment during a period not to exceed thirty (30) days. No permit for substitution shall be issued in connection with the shipment of coal sold to a Retail Dealer. The issuance of such permits will be restricted for application to spot orders or contracts filed

by the Commission. All permits issued hereunder shall be consecutively numbered.

Mixed cars. - Mixed cars of more than one size of coal may be loaded for shipment.

Rules and regulations to effectuate subsection (g) part II section 4.-Established prices shall not be evaded or violated by or through the use of docks or other storage facilities or transportation facilities, or by or through the use of subsidiaries, affiliated sales or transportation companies or other intermediaries or instrumentalities, or by or through the absorption, directly or indirectly, of any transportation or incidental charge of whatsoever kind or character, or any part thereof.

Definition and establishment of consuming market.—The consuming market area for this district consists of the states of Texas, New Mexico, Arizona, California, Colorado.

Revision and amendment.—These Marketing Rules and Regulations are subject to revision and amendment by further order of the Coal Commission.

MINIMUM PRICE AREA NO. 7-DISTRICT BOARD NO. 19.

PROPOSED MARKETING RULES AND REGULATIONS

A witness for District Board No. 19, qualified as an expert in the marketing of coal in that District, introduced into evidence as Exhibit No. 188, the Marketing Rules and Regulations proposed by District No. 19 in compliance with Commission Order No. 244. This witness testified that these rules and regulations were properly submitted to Code Members within said District, and that no protests concerning such proposals were received from Code Members. Accordingly, the Board, on August 9, 1938, adopted said rules and regulations and later submitted them to the Commission.

The witness testified that the rules proposed by District No. 19 are identical to those proposed by District No. 17; that their competitive markets are similar; that the two District Boards had the same factors under consideration in proposing their respective rules; and that the testimony given in behalf of the proposed rules for District No. 17 should be adopted as the testimony in support of the proposed rules of District Board No. 19. The witness further stated that the testimony with respect to certain desirable modifications of the proposals of District No. 17 was equally applicable to District No. 19, and should be applied to the rules proposed by District No. 19. Such modifications, in the opinion of the witness, would be reasonable; not inconsistent with the provisions of Section 4 of the Act, and in conformance with the standards of fair competition contained in the

Accordingly, we are of the opinion that all deletions, modifications and clarifica-lout consent of the offeree.

with such agency as may be prescribed | tions determined by the Commission in the foregoing findings of fact for District No. 17 should apply to the proposed rules and regulations of District Board No. 19, and we, therefore, find that the following rules and regulations proposed by District Board No. 19, reflecting such deletions, modifications and clarifications, are reasonable: not inconsistent with the requirements of Section 4 of the Act, and in conformance with the standards of fair competition established in the Act:

> MARKETING RULES AND REGULATIONS INCI-DENTAL TO THE SALE AND DISTRIBUTION OF COAL BY CODE MEMBERS WITHIN DIS-TRICT NO. 19 AS PROPOSED BY DISTRICT BOARD NO. 19 AND AS APPROVED, DISAP-PROVED, OR MODIFIED FOR THE PURPOSE OF COORDINATION

Section I.—Definitions

- 1. The term person as used herein, includes individuals, firms, associations, partnerships, corporations, trusts, trustees, cooperatives, receivers and trustees in bankruptcy and in other legal proceedings, and any other recognized forms of business organizations.
- 2. A sales agent is a person who, as agent of a code member (and therefore without purchasing the coal), sells coal produced by such code member for him or on his behalf: Provided, that "sales agent" shall not include an individual (herein referred to as a "salesman") regularly and continuously employed by a code member, and who regularly devotes the major portion of his time to the solicitation of purchases of coal produced by his code member employer.
- 3. A commission is the total of all compensations and allowances received by a sales agent from a code member for services rendered in the sale of coal.
- 4. A registered distributor is a person who has been duly registered by the Coal Commission pursuant to the rules and regulations prescribed by the Commission for the administration of Section 4 II (h) of the Act.
- 5. A spot order is a legal obligation for the sale and purchase of coal, the delivery of which is stipulated to be made within not more than thirty (30) days from the date upon which the order was accepted.
- 6. A contract is a legal obligation for the sale and purchase of coal, the deliveries of which are stipulated to be made during a period longer than that specified for a spot order.
- 7. A commitment is the status of a contract between the time a quotation is accepted or an option is exercised and the time the contract is formally reduced to writing.
- 8. A quotation is an offer for the sale of coal at a price which the offerer may withdraw prior to its being acted upon by the offeree.
- 9. An option is an offer for the sale of coal at a price to be accepted within a time certain, during which time the offerer may not withdraw the offer with-

- 10. Coal Commission as used herein, shall mean the National Bituminous Coal Commission established under the provisions of the Bituminous Coal Act of 1937.
- 11. Act as used herein, shall mean the Bituminous Coal Act of 1937.
- 12. District Board as used herein, shall mean any District Board established under the provisions of Section 4, Part I (a) of the Act.
- 13. Statistical Bureau shall mean, unless otherwise specifically stated, the statistical bureau of the Commission for the district in which the coal involved in any transaction is produced, or the district in which is located a mine of a code member affected by any order or regulation.
- 14. Minimum Price shall mean a minimum price established and made effective by the Coal Commission.
- 15. Maximum Price shall mean a maximum price established and made effective by the Coal Commission.
- 16. Registration and Register as used herein, shall refer to registration with the Coal Commission pursuant to rules and regulations prescribed by the Commission for the administration of Section 4 of the Act.
- 17. The term producer includes all individuals, firms, associations, corporations, trustees, and receivers engaged in the business of mining coal.
- 18. The terms reconsignment and diversion as used herein shall mean the change in the original consignee or in the destination or route.
- 19. A code member means a producer who has accepted and holds membership in the Bituminous Coal Code promulgated under the Bituminous Coal Act of 1937.
- 20. Coal as used herein shall mean bituminous coal.
- 21. The term bituminous coal includes all bituminous, semi-bituminous, and sub-bituminous coal and shall exclude lignite, which is defined as a lignitic coal having calorific value in British thermal units of less than seven thousand six hundred per pound and having a natural moisture content in place in the mine of 30 per centum or more.
- 22. The term control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Section II.—Sales Agents

- 1. All appointments of sales agents by code members or their agents or authorized representatives, and the terms and conditions of such appointments shall be subject to the Marketing Rules and Regulations from time to time established by the Coal Commission.
- 2. Each code member shall be responsible for the compliance by all his sales agents and agents and employees of sales agents with the provisions of the Bituminous Coal Code and of all rules and

regulations, promulgations and determi-|other than the names and addresses of of State or local governments, as are nations of the Coal Commission.

- 3. (A) Every contract for the appointment of a sales agent by Code Members or by agents or authorized representatives of Code Members, or any modification thereof, shall be in writing, and shall fully set forth therein all the terms and conditions of such contract, including the amount or basis of the sales agent's commission. Certified copies of all such agency contracts entered into on or prior to the effective date of the establishment of these rules and regulations and in effect on such date, shall be filed by the Code Member with the Statistical Bureau, or Bureaus, within twenty (20) business days after such date.
- (B) Certified copies of all contracts appointing sales agents or of agreements modifying any sales agency contract, entered into subsequent to the effective date of these rules and regulations, shall be similarly filed by the Code Member within ten (10) business days after the date upon which such contracts or agreements have been entered into.
- (C) Upon the expiration, termination, or rescission of any sales agency contract. the Code Member principal shall make a report thereof to the Statistical Bureau, or Bureaus, within ten (10) business days after the date of such expiration, termination, or rescission.
- 4. (A) As to all coal sold by a Code Member otherwise than through a sales agent or through an employee regularly employed as a salesman by the Code Member, such Code Member shall, not later than the fifteenth day of each month, file with the Statistical Bureau. or Bureaus, a list of all persons through whom, directly or indirectly, any such coal was sold during the preceding calendar month, with a statement of the duration and character of their employment, the tonnage sold by, and the rate and amount of compensation paid to, each of them.
- (B) Not later than the fifteenth day of each month, each Code Member shall also file with the Statistical Bureau, or Bureaus, similar information obtained from his sales agents concerning sales of coal made during the preceding calendar month, by the sales agents' representatives and employees other than salesmen regularly employed.
- (C) Not later than the fifteenth day of each month, each Code Member shall also file with the Statistical Bureau, or Bureaus, a statement showing the names and addresses of distributors to whom the Code Member or his sales agents sold coal during the preceding calendar month, the tonnage sold, and the amount of discount allowed to each such distributor.
- 5. A list showing the names and addresses of sales agents and the Code Members for whom such agents act shall be published by the Coal Commission from time to time.
- 6. All agency contracts and other information filed by Code Members in conformity with the foregoing regulations, eral Government or with such agencies

- Commission as the confidential records of said parties and shall not be made public without the consent of the Code Member from whom the same shall have been obtained, except where such disclosure is required in any proceeding before the Coal Commission by way of enforcement of the Act or upon the order of any court of competent jurisdiction.
- 7. From and after twenty (20) business days following the effective date of these Marketing Rules and Regulations no Code Member or sales agent of Code Member shall allow or pay, directly or indirectly, any commission or compensation to any sales agent.
- (a) Unless the contract of agency shall have been filed with the Coal Commission, as hereinbefore required, and
- (b) Unless the sales agent shall have agreed, in writing, with the Code Member to conform to and observe the minimum and maximum prices and Marketing Rules and Regulations established by the Coal Commission and the Fair Trade Practice Provisions of the Act, as well as all proper Orders of the Commission, and
- (c) Unless the sales agent shall have in good faith complied with the agreement as in paragraph (b) above provided.
- 8. No commission shall be paid to a sales agent by a Code Member where the coal is delivered or sold to any person who owns such sales agent or who, financially or otherwise, controls such agent.
- 9. Every sales agent shall cause to be clearly set forth upon any form of solicitation, order, invoice and statement covering coal offered for sale or sold, the following:
- (1) Either the name of the producer,
- (2) The trade name established and generally used by the producer in designation of coal produced from the mine from which shipment was made or is to be made.

Section III.—Discounts

1. No Code Member or sales agent of a Code Member shall pay or allow any discount from minimum prices to any person unless such person has been registered by the Coal Commission as authorized to receive such discount at the time of the sale.

Section IV.—Quotations, Options and **Contracts**

1. Subject to further order of the Coal Commission no Code Member or sales agent of a Code Member shall enter into any agreement or order for the sale of coal providing for delivery for a periodin excess of that authorized for a spot order, and no prices shall be less than the applicable minimum prices in effect at the time of the making of the agreement: Provided, however, that contracts for periods not exceeding one (1) year may be made with agencies of the Fed-

- sales agents, shall be held by the Coal required by law to purchase coal for periods in excess of thirty (30) days, at the following applicable minimum prices:
 - (a) For deliveries during the first thirty (30) days of the contract, at not less than the applicable minimum prices in effect at the time of the making of the agreement:
 - (b) For deliveries thereafter at not less than the applicable minimum prices in effect at the time of delivery if such price is higher than the contract price.
 - In the case of Governmental Agencies, options may be given for a period not exceeding forty-five (45) days. Subject to further order of the Coal Commission, no option for the sale of coal may be given, except as herein specifically provided.
 - 2. Upon the revocation or suspension of Rule 1 of this Section, Code Members or sales agents of Code Members may thereafter enter into contracts for the sale and delivery of coal at prices not less than the minimum price in effect at the time of the making of the contract. upon the following conditions:
 - A. No contract for the sale of coal shall provide for delivery over a period in excess of twelve (12) months, except by special permission from the Coal Commission upon a showing of the necessity of meeting long term contract competition of oil, gas, or other fuels or forms of power, or for such other reasons as the Commission may deem appropriate in order to further the effectual administration of the Act.
 - B. No contract for the sale of coal shall provide for deliveries to commence at a time, later than ninety (90) days from the date upon which such contract was entered into.
 - C. All contracts shall be in writing and shall express the entire agreement between the parties. The contract shall clearly state the date of execution, the effective date, the expiration date, the price agreed upon, the terms of payment, the size and grade of coal sold. the number of cars or tonnage to be shipped, the name of the originating mine, and, where the coal is purchased for consumption, the use to which the coal is to be applied. Contracts may also be made either (a) calling for a buyer's entire requirements or a stated percentage of his requirements, showing the maximum tonnage to be shipped thereunder, or (b) covering a buyer's requirements and specifying the tonnage to be shipped with an allowable overshipment or undershipment of not exceeding twenty (20) percent of the tonnage specified.

The provisions of the rule stated in the foregoing paragraph relating to quantity shall not apply to contracts made with agencies of the Federal, State or local Governments.

D. Every contract shall express the entire agreement between the parties made except by written agreement which shall conform to all the requirements set forth in these rules and regulations.

- E. Each contract shall contain the following provisions, the meaning and effect of which shall not be changed or altered by any other provision of the contract:
- "(1) This contract and the performance of all provisions thereof are expressly subject to the Bituminous Coal Act of 1937 and the lawful orders and regulations issued thereunder by the National Bituminous Coal Commission.
- "(2) No shipment consigned to any destination point may be diverted or reconsigned without the consent of the seller confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the minimum price prescribed for such coal for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.
- "(3) The coal shipped pursuant to this contract is sold and purchased upon the following conditions:
- "(a) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein:
- "(b) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than applicable minimum price for such coal at time of diversion, for the use to which it is actually applied."
- F. In any case where a contract is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in Item E (2) of rule 2 of this section without first securing the consent of the Code Member producing such coal to be confirmed in writing.
- G. Upon the revocation or suspension of Rule 1 of this Section, quotations and options for the sale of coal may be given for a period not exceeding fourteen (14) days. If the minimum price is increased beyond the quoted price within such fourteen (14) days, any quotation or option not accepted or exercised prior to the effective date of the price change shall, without notice, be considered withdrawn and no longer effective. Every quotation or option shall contain a provision to the foregoing effect and shall further stipulate that any contract or spot order entered into thereunder shall be subject to these Marketing Rules and Regulations.
- H. The provisions of this Rule 2/G shall not apply to sealed bids on business of the United States Government or States or Political subdivisions thereof, in which cases quotations and options at

days from the final filing date of bids.

3. A report of every commitment shall be filed by the Code Member or his sales agent with the Statistical Bureau or Bureaus within fifteen (15) business days from the date of the making of the agreement. Such reports shall set forth all the terms and conditions of the commitment. A true copy of every contract and of any agreement for modification thereof shall be filed with the Statistical Bureau within fifteen (15) business days from the date of execution of such contract or agreement for modification: Provided, however, that a report of the commitment need not be filed if a copy of the contract is filed within fifteen (15) business days.

Section V.—Spot Orders

- 1. A spot order shall be in writing or confirmed in writing within five (5) business days from the date of the making thereof.
- 2. Each spot order shall be subject to the following conditions which shall either be endorsed upon the form of the order or upon the written confirmation thereof by the Code Member or his sales agent, the meaning and effect of which shall not be changed or altered by any other provisions of the order:
- "(a) No shipment consigned to any destination may be diverted or reconsigned without the consent of the seller confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the minimum price prescribed for such coal for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.
- "(b) The coal shipped pursuant to this order is sold and purchased upon the following conditions:
- "(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein;
- "(2) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied.
- "(c) If shipments called for by this order are not completed within thirty (30) days from the date of this order. the unfulfilled portion of the order shall be cancelled and no delivery of such tonnage shall be made."
- 3. In any case where a sale is made by a sales agent of a Code Member, such sales agent shall not exercise the Code Member unless the analysis upon not less than the minimum price in effect | rights of the seller as defined in Item 2 | at the time the bid is filed may be given (a) of this section without first secur- is based has been previously filed as re-

and no modification thereof shall be for a period not exceeding forty-five (45) ing the consent of his Code Member principal to be confirmed in writing.

4. All the terms and conditions of a sale of coal must be fully and expressly set forth either in the order or in the written confirmation thereof, and such order or written confirmation thereof shall specifically contain all the terms required by Rule 2 (c) of Section IV of these marketing rules and regulations. Within ten (10) business days after the date of the making of the spot order or date of the written confirmation thereof, the Code Member or his sales agent shall file with the Statistical Bureau or Bureaus a copy of such spot order or confirmation. Any modification of a spot order must also be made in writing and filed with the Statistical Bureau or Bureaus in the same manner.

Section VI.—Use of Coal Analyses

- 1. No analysis of coal shall be utilized by a Code Member of his sales agent. in selling or offering for sale any coal produced by the Code Member, unless such Code Member shall have previously filed with the Statistical Bureau of the Coal Commission and the District Board for the District in which the coal is produced, copies of such analysis, together with a certificate setting forth the time and manner of obtaining the sample analyzed, the name and address of the person or firm making the analvsis and stating that such analysis is truly representative of the grade and size of coal as regularly produced by the code member. Each such analysis shall be not less than a proximate analysis showing ash, volatile matter, fixed carbon, sulphur and British thermal units. Each analysis shall further show whether made on an "as received" or moisture "free" basis and if on an "as received" basis, the analysis shall include moisture content.
- 2. All analyses so filed shall be subject to inspection at the office of the Statistical Bureau at any time during office hours by any interested person, and may be used by the District Board and the Coal Commission in determining from time to time proper classifications of the coals produced by the code member.
- 3. Any analysis of the coal of a Code Member made by or on behalf of a consumer and accepted by the Code Member as the basis for an adjustment of price under any contract or order, shall be filed by the Code Member with the proper Statistical Bureau and District Board, within ten (10) days after such adjustment is made and shall be subject · to the provisions of Rule 2 herein.
- 4. No agreement or order for the sale of coal produced by a Code Member, made upon a premium and penalty basis, shall be entered into or accepted by a which the premium and penalty clause

quired in Rule No. 1. Such analysis shall be accompanied by a statement setting forth in full terms of the premium and penalty provisions of the proposed contract or order.

- 5. In the case of premium and penalty agreements entered into prior to the effective date of these regulations, and claimed to be continuing in effect, the Code Member shall file a statement containing the information required under Rule No. 4, within fifteen (15) days from such effective date.
- 6. From and after the effective date of these rules and regulations, no Code Member shall enter into or perform any agreement made upon a penalty or a premium and penalty basis which will permit the sale of coal at an aggregate contract price below the applicable minimum price established by the Coal Commission for the coal sold and delivered upon such agreement subsequent to said effective date: Provided, that where a Code Member has entered into an agreement made upon a penalty or a premium and penalty basis, this rule shall not be considered as affecting any claim that the buyer might otherwise have had for substandard preparation or quality under Section IX of these marketing rules and regulations.

Section VII.—Terms of Payment

The price and fair trade practice provisions of the Act shall not be evaded or violated by a Code Member, or his sales agent through the use of terms of payment, and in no instance shall terms of payment be more favorable than the following:

- 1. On railroad fuel and on coal sold to industrial consumers for their own use, the date of payment shall be on or before the twenty-fifth (25th) of the month following the date of shipment.
- 2. Other coals shall not be sold on more favorable terms of payment than net cash thirty (30) days from date of ship-
- 3. Invoices shall be paid in full in United States currency, or funds equivalent thereto, not later than the due date.

No portion of the sale price may be withheld by agreement between the buyer and the seller based upon any unadjusted claim of the buyer.

No sales, delivery, or offer for sale of coal shall be made upon any condition, expressed or implied, that any portion of the sale price may be withheld by the buyer, or deposited in escrow, or made subject to rebate or refund by the seller. pending or based upon a determination of the constitutionality of any provision of the Act, of the jurisdiction of the Coal Commission, or of the validity or applicability of any order of the Coal Commission.

debtedness, or where payment is made | furnish complete information thereon to under any circumstances after the due date of the account, the seller shall charge and the buyer shall pay interest from and after the due date of the account at the current rate in the locality to which the coal is shipped to the vendee.

- 5. Freight on rail shipments shall not be paid by a Code Member or his sales agent except to prepay stations as published in current railway tariffs or to the United States Government, States or political subdivisions thereof. Where freight is thus prepaid, the amount thereof shall immediately upon receipt of freight bill or notice of sight draft payment, be invoiced to the buyer for immediate payment.
- 6. The agreement by a Code Member, express or implied, to extend credit for a period longer than that authorized by these rules and regulations, with the effect of violating the price provisions or the unfair methods of competition of the Act, shall constitute a violation of the Code.

Section VIII.—Miscellaneous

- 1. No deduction or allowance from invoice prices shall be granted by any code member or his sales agent to any purchaser for advertising.
- 2. Code members (or their agents or representatives) either individually or collectively, with or without financial participation by retailers of coal, may conduct advertising campaigns seeking to increase the use of coal. The amount of expenditures incurred by a code member, his agent or representative for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.
- 3. Where coal is refused by a consignee in transit or at destination, the Code Member may sell the same at the best obtainable price: Provided, that in each case the code member shall file with the Statistical Bureau, within five (5) days from the date of such resale a statement giving the name and address of the consignee and the reasons for the refusal, the price at which the coal was originally sold, the name and address of the purchaser upon resale and the price received by the seller upon resale, a copy of the carrier's notice of refusal or notice of reconsignment and such other pertinent facts as may be offered in proof of the necessity of such resale, and that in making such resale the provisions of the Code and the Marketing Rules and Regulations of the Coal Commission other than as to price have not been violated or evaded.
- 4. All Code Members shall promptly Coal Commission for the District in which trade acceptance, or other form of in-carrier making such reconsignments to mine.

such Statistical Bureau.

5. No allowance shall be made for any shipment of coal of substandard preparation or quality unless formal claim duly executed by or on behalf of the buyer and verified by affidavit setting forth the amount claimed by way of allowance and reasons for the claim is filed with the Code Member or his sales agent within ten (10) days after the receipt of the coal

The Code Member or sales agent with whom such claim for allowance is filed shall immediately notify the Statistical Bureau and the District Board, furnishing an authentic copy of the buyer's claim together with a statement of the producer's views as to the validity of the claim, setting forth:

- (a) The name and address of the consignee and the reason for the allowance.
- (b) The amount of allowance or adjustment made.
- (c) The price at which the coal was sold.
 - (d) The tonnage delivered.
- (e) The name of the mine and the Code Member.
 - (f) Date of Shipment.
- (g) Grade and size of coal and destination.
- (h) A statement that the adjustment has not been made with the purpose or intent of evading the price or fair trade practice provisions of the Act.
- 6. The screening of mine run or rescreening of other grades of coal sold and billed as such for the buyer's account for the purpose of keeping the resultant products separate in the shipment thereof is prohibited. All coal must be sold and invoiced on a price per ton basis and under the designation shown therefor in the price schedule published by the Coal Commission.
- 7. All coal confiscated or lost in transit shall be invoiced to the carrier at not less than the minimum price established for such coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or loss, whichever may be the higher.
- 8. No substitution may be made upon any spot order or contract, of any grade or size of coal taking a minimum price higher than the price specified in such order or contract, except upon the following conditions:
- (a) The proposed substitution shall not be an express or implied condition of the order or contract.
- (b) The coal substituted must be coal which the Code Member has already produced and loaded into transportation facilities and which cannot be sold furnish to the Statistical Bureau of the promptly by the exercise of the usual sales effort, such substitution to be limthe coal originated, full reports of all ited to a specific tonnage for shipment 4. Where payment is made by note, reconsignments and shall authorize the on a specific order and from a specific

- ably necessary as an emergency measure ance. in order to continue operation of the mine of the Code Member.
- (d) The substitution shall be acceptable to the purchaser of the coal, and shall not be made with the purpose or effect of conferring any advantage on the purchaser or securing any preference or advantage for the Code Member over his competitors.
- (e) Such substitution may be made only with the prior approval of a duly designated representative of the Commission and in each instance formal application therefor shall be made upon forms provided by the Commission and permits shall be issued prescribing the conditions of substitution in each case approved.
- (f) A monthly report of substitution permits shall be mailed by Code Members to the office of their Board. The Commission may from time to time publish the essential facts as to all substitution permits granted.
- (g) In each case of coal shipped under a substitution permit each invoice shall specifically show the permit number and the size and grade of coal substituted.
- 9. Failure to file information required by the within Marketing Rules and Regulations or the filing of false information, wilfully made, will subject the party failing to file the information required. or the party so filing, to the penalties of the Act and other penalties imposed by law.
- 10. These Marketing Rules and Regulations are subject to revision and amendment by further order of the Coal Commission.

Section IX.—Unfair Methods of Competition

As provided in Section 4, Part II (i) of the Act, the following practices with respect to coal shall be unfair methods of competition and shall constitute violations of the code:

- 1. The consignment of unordered coal. or the forwarding of coal which has not actually been sold, consigned to the producer or his agent: Provided, however, that coal which has not actually been sold may be forwarded, consigned to the producer or his agent at rail or track yards, tidewater ports, river ports, or lake ports, or docks beyond such ports, when for application to any of the following classes: Bunker coal, coal applicable against existing contracts, coal for storage (other than in railroad cars) by the producer or his agent in rail or track yards or on docks, wharves, or other yards for resale by the producer or his agent.
- 2. The adjustment of claims with purchasers of coal in such manner as to grant secret allowances, secret rebates, or secret concessions, or other price discrimination.

- (c) The substitution must be reason-| granting a discriminatory credit allow-
 - 4. The granting in any form of adjustments, allowances, discounts, credits, or refunds to purchasers or sellers of coal, for the purposes or with the effect of altering retroactively a price previously agreed upon, in such manner as to create price discrimination.
 - 5. The predating or postdating of any invoice or contract for the purchase or sale of coal, except to conform to a bona fide agreement for the purchase or sale entered into on the predate.
 - 6. The payment or allowance in any form or by any device of rebates, refunds, credits, or unearned discounts, or the extension to certain purchasers of services or privileges not extended to all purchasers under like terms and conditions, or under similar circumstances.
 - 7. The attempt to purchase business, or to obtain information concerning a competitor's business by concession, gifts, or bribes.
 - 8. The intentional misrepresentation of any analysis or of analyses, or of sizes, or the intentional making, causing, or permitting to be made, or publishing, of any false, untrue, misleading, or deceptive statement by way of advertising, invoicing, or otherwise concerning the size, quality, character, nature, preparation, or origin of any coal bought, sold, or consigned.
 - 9. The unauthorized use, whether in written or oral form, of trade-marks, trade names, slogans, or advertising matter already adopted by a competitor, or any deceptive approximation thereof.
 - 10. Inducing or attempting to induce, by any means or device whatsoever, a breach of contract between a competitor and his customer during the term of such contract.
 - 11. Splitting or dividing commissions, brokers' fees, or brokerage discounts, or otherwise in any manner directly or indirectly using brokerage commissions or jobbers' arrangements or sales agencies for making discounts, allowances, or rebates, or prices other than those determined under this Act, to any industrial consumer or to any retailers, or to others, whether of a like or different class.
 - 12. Selling to, or through, any broker, jobber, commission account, or sales agency, which is in fact or in effect an agency or an instrumentality of a retailer or an industrial consumer or of any organization of retailers or industrial consumers, whereby they or any of them secure either directly or indirectly a discount, dividend, allowance, or rebates, or a price other than that determined in the manner prescribed by this Act.
- 13. Employing any person or appointing any sales agent, at a compensation obviously disproportionate to the ordinary value of the service or services rendered, and whose employment or ap-3. The prepayment of freight charges pointment is made with the primary in-

ment with a purchaser or purchasers of coal.

MINIMUM PRICE AREA NO. 7.—DISTRICT BOARD No. 20

PROPOSED MARKETING RULES AND REGULATIONS

A qualified expert on the marketing of coal in District No. 20 testified that the District Board, pursuant to Commission Order No. 244, prepared and submitted to Code Members for that District, reasonable marketing rules and regulations incidental to the sale and distribution of coal by Code Members within the District. The witness further testified that no protests were received from Code Members, and accordingly, the District Board adopted the proposed marketing rules and regulations.

These marketing rules and regulations were transmitted to the Commission and were introduced into evidence as Exhibit No. 193. The witness testified that he had participated in the preparation of and was thoroughly familiar with Exhibit No. 193, and that they were reasonable rules and regulations incidental to the sale and distribution of coal by Code Members within the District, were not inconsistent with the requirements of Section 4 and did conform to the standards of fair competition set forth in Section 4, Part II (i) of the Act.

We are of the opinion that definitions 17 to 22 contained in Section I of the composite findings hereinafter given are reasonable and desirable. The District Board did not define these terms although they appear in various rules proposed by the Board.

We are also of the opinion that rule (b) of Section IV should be deleted for the reason that this rule attempts to enlarge the Commission's jurisdiction over a subject matter which is covered by paragraph 13 of Section 4 II (i) of the Act.

The witness testified that he was familiar with Exhibit No. 191, entitled "Extracts from Rules Proposed by District No. 17" and with the other marketing rules and regulations proposed by District No. 17 that he had heard the testimony of the expert witness for District No. 17, and that in his opinion the rules and regulations set forth in Exhibit No. 191, subject to certain exceptions to which the witness subsequently testified, and the other rules and regulations proposed by District No. 17 in so far as the latter are not in conflict with the rules and regulations proposed by District No. 20, were reasonable and necessary rules and regulations for District No. 20.

The first exception which the witness took to the rules and regulations in Exhibit No. 191 was to that part of Rule 5 of Section IX which permits the prepayment of freight on coal shipped "to the United States Government, states or political subdivisions thereof". The witness' objection to this clause was that with intent to or having the effect of tention and purpose of securing prefer- the freight was frequently double the

amount of the price of the coal and for the Code Member to prepay the freight entailed upon him a financial burden which frequently precluded his active bidding for such business. It was the opinion of the witness that it would be a simple matter for the United States Government to issue Government Bills of Lading which make it unnecessary to prepay freight, thereby relieving the code member of that additional financial burden. On the basis of this testimony we are of the opinion that rule (c) of Section IX of Exhibit 193 should be modified to conform to Rules of Section IX of Exhibit 191 except that the words "or to the United States Government, States or political subdivisions thereof" should be deleted from the rule.

The witness testified that with respect to the rules of Section XI of Exhibit 191, a certain formula should be developed governing the amount of adjustment which can be made upon an equitable basis. The witness testified that such a formula suitable for District 20 is contained in Section III of the Rules proposed by District 20, and has been in use in District 20 for several years. We likewise approve for District 20 the modification of Rule 5 of Section XI of Exhibit 191 made in Rule 5 of Section VIII of the composite finding for District 17.

The third exception which the witness took to the rules and regulations in Exhibit No. 191 was to paragraphs (a), (b), (c), (d) and (e) of Rule 8 of Section XI referring to substitutions. The witness testified that he had reference to substitutions of coal for other than railroad coal purchases. It was his opinion that a broad uncontrolled and unlimited provision covering substitution would be manifestly unjust and would permit price evasion. The witness testified that this was the history of substitution in the coal industry. His objection to the rule as contained in Exhibit No. 191 was that it was too broad and gave too much latitude and opportunity for price evasion. In light of this testimony we are of the opinion that Rule X (b) of Exhibit 193, District 20's proposed rules should be modified to read as follows:

No substitution of grades or sizes of higher price coal may be made, except for railroad locomotive fuel, on spot orders or contracts, unless the higher price be applied to such substituted size. Substitutions on orders for railroad locomotive fuel may be made only upon the following conditions:

- (a) The proposed substitutions shall not be an express or implied condition of the order or contract
- (b) The coal substituted must be coal which the Code Member has already produced and loaded into transportation facilities and which cannot be sold promptly by the exercise of the usual sales effort, such substitution to be limited to a specific tonnage for shipment on a specific order and from a specific fication of rule 5 of Section XI of Ex- from the date upon which the order was mine.

- (c) The substitution must be reason- | VIII of the composite findings for Disably necessary as an emergency measure | trict No. 17. in order to continue operation of the mine of the Code Member.
- (d) The substitution shall be acceptable to the purchaser of the coal, and shall not be made with the purpose or effect of conferring any advantage on the purchaser or securing any preference or advantage for the Code Member over his competition.
- (e) Such substitution may be made only with the prior approval of a duly designated representative of the Commission and in each instance formal application therefor shall be made upon forms provided by the Commission and permits shall be issued prescribing the conditions of substitution in each case approved.

The witness further testified that subsection (d) of Section VII of Exhibit No. 193 relating to the modification of prices by reason of cost increases resulting from wage increases and taxes, was not a proper subject for marketing rules and regulations and therefore suggested its deletion. We therefore find that subsection (d) of Section VII of Exhibit No. 193 should be deleted.

The witness further testified that subsection (d) of Section X of Exhibit No. 193 relating to assistance given by a code member to retailers was an unfair trade practice which, in his opinion, was sufficiently provided for in the Act and therefore recommended its deletion. We, therefore, find that subsection (d) of Section X of Exhibit No. 193 should be deleted.

The witness testified that in his opinion the rules proposed by District No. 17, with the exceptions to which he specifically testified, were reasonable and applicable to District No. 20. Rule 4 of Section IX for District No. 17 was modified in the findings of fact for District No. 17 so as to provide that where payment is made under any circumstances after the due date of the account, interest must be paid from the due date of the account. We are of the opinion that this rule, as modified, should be incorporated in the composite findings for District No. 20.

District Board No. 17 likewise proposed in Rule 6 of Section XI that all coal must be sold and invoiced under the designation shown therefore in the price schedule published by the Coal Commission. This rule has been modified so as to also provide that all coal must be sold and invoiced on a price per ton basis. We are of the opinion that the rule, as modified, should also be included in the composite findings for District No. 20.

We disapprove rules (b) and (c) of Section III for the reason that they are impractical to enforce and administer. On the basis of the testimony, we approve rule (a) of Section III and we likewise approve for District No. 20 modihibit No. 191 made in rule 5 of Section accepted.

In light of the testimony of the witness that the rules proposed by District No. 17 contained in Exhibit 191 and the other rules proposed by District No. 20 were reasonable and necessary rules and regulations for District No. 20 with such exceptions as the witness specifically testified to, we are of the opinion that the rules and regulations proposed by District No. 20 should be modified to conform to the composite findings for District No. 17 except as to those instances where we have found that certain modifications of the rules proposed by District No. 17 were reasonable for District No. 20.

After due consideration of all the testimony in the record relating to the rules proposed by District No. 20, we find that the following rules and regulations incidental to the sale and distribution of coal by Code Members in District No. 20, reflecting the modifications, deletions and additions hereinbefore referred to, are reasonable, not inconsistent with the requirements of Section 4 of the Act, and in conformance with the standards of fair competition established in the Act:

MARKETING RULES AND REGULATIONS INCI-DENTAL TO THE SALE AND DISTRIBUTION OF COAL BY CODE MEMBERS WITHIN DISTRICT NO. 20 AS PROPOSED BY DISTRICT BOARD NO. 20 AND AS APPROVED, DISAPPROVED, OR MODIFIED FOR THE PURPOSE OF COORDI-NATION

Section I.—Definitions

- 1. The term person as used herein, includes individuals, firms, associations, partnerships, corporations, trusts, trustees, cooperatives, receivers and trustees in bankruptcy and in other legal proceedings, and any other recognized forms of business organizations.
- 2. A sales agent is a person who, as agent of a code member (and therefore without purchasing the coal), sells coal produced by such code member for him or on his behalf: Provided, that sales agent shall not include an individual (herein referred to as a salesman) regularly and continuously employed by a code member, and who regularly devotes the major portion of his time to the solicitation of purchases of coal produced by his code member employer.
- 3. A commission is the total of all compensations and allowances received by a sales agent from a code member for services rendered in the sale of coal.
- 4. A registered distributor is a person who has been duly registered by the Coal Commission pursuant to the rules and regulations prescribed by the Commission for the administration of Section 4 II (h) of the Act.
- 5. A spot order is a legal obligation for the sale and purchase of coal, the delivery of which is stipulated to be made within not more than thirty (30) days

- the sale and purchase of coal, the deliveries of which are stipulated to be made during a period longer than that specified for a spot order.
- 7. A commitment is the status of a contract between the time a quotation is accepted or an option is exercised and the time the contract is formally reduced to writing.
- 8. A quotation is an offer-for the sale of coal at a price which the offerer may withdraw prior to its being acted upon by the offeree.
- . 9. An option is an offer for the sale of coal at a price to be accepted within a time certain, during which time the offerer may not withdraw the offer without consent of the offeree.
- 10. Coal Commission as used herein, shall mean the National Bituminous Coal Commission established under the provisions of the Bituminous Coal Act of 1937.
- 11. Act as used herein, shall mean the Bituminous Coal Act of 1937.
- 12. District Board as used herein, shall mean any District Board established under the provisions of Section 4, Part I (a) of the Act.
- 13. Statistical Bureau shall mean, unless otherwise specifically stated, the statistical bureau of the Commission for the district in which the coal involved by any transaction is produced, or the district in which is located a mine of a code member affected by any order or regulation.
- 14. Minimum Price shall mean a minimum price established and made effective by the Coal Commission.
- 15. Maximum Price shall mean a maximum price established and made effective by the Coal Commission.
- 16. Registration and Register as used herein, shall refer to registration with the Coal Commission pursuant to rules and regulations prescribed by the Commission for the administration of Section 4 of the Act.
- 17. The term producer includes all individuals, firms, associations, corporations, trustees, and receivers engaged in the business of mining coal.
- 18. The terms reconsignment and diversion as used herein shall mean the change in the original consignee or in the destination or route.
- 19. A code member means a producer who has accepted and holds membership in the Bituminous Coal Code promulgated under the Bituminous Coal Act of 1937.
- 20. Coal as used herein shall mean bituminous coal.
- 21. The term bituminous coal includes all bituminous, semi-bituminous, and sub-bituminous coal and shall exclude lignite, which is defined as a lignitic coal having calorific value in British thermal units of less than seven thousand six

30 per centum or more.

22. The term control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Section II.—Sales Agents

- 1. All appointments of sales agents by code members or their agents or authorized representatives, and the terms and conditions of such appointments shall be subject to the Marketing Rules and Regulations from time to time established by the Coal Commission.
- 2. Each code member shall be responsible for the compliance by all his sales agents and agents and employees of sales agents with the provisions of the Bituminous Coal Code and all rules and regulations, promulgations and determinations of the Coal Commission.
- 3. (A) Every contract for the appointment of a sales agent by Code Members or by agents or authorized representatives of Code Members, or any modification thereof, shall be in writing, and shall fully set forth therein all the terms and conditions of such contract, including the amount or basis of the sales agents' commission. Certified copies of all such agency contracts entered into or prior to the effective date of the establishment of those rules and regulations and in effect on such date, shall be filed by the Code Member with the Statistical Bureau, or Bureaus, within twenty (20) business days after such date.
- (B) Certified copies of all contracts appointing sales agents or of agreements modifying any sales agency contract, entered into subsequent to the effective date of these rules and regulations, shall be similarly filed by the Code Member within ten (10) business days after the date upon which such contracts or agreements have been entered into.
- (C) Upon the expiration, termination, or rescission of any sales agency contract, the Code Member principal shall make a report thereof to the Statistical Bureau, or Bureaus, within ten (10) business days after the date of such expiration, termination, or rescission.
- 4. (A) As to all coal sold by a Code Member otherwise than through a sales agent or through an employee regularly employed as a salesman by the Code Member, such Code Member shall, not later than the fifteenth day of each month, file with the Statistical Bureau, or Bureaus, a list of all persons through whom, directly or indirectly, any such coal was sold during the preceding calendar month, with a statement of the duration and character of their employment, the tonnage sold by, and the rate and amount of compensation paid to, each of them.
- (B) Not later than the fifteenth day of each month, each Code Member shall | thorized to receive such discount at the hundred per pound and having a natural also file with the Statistical Bureau, or time of the sale.

6. A contract is a legal obligation for | moisture content in place in the mine of | Bureaus, similar information obtained from his sales agents concerning sales of coal made during the preceding calendar month, by the sales agents' representatives and employees other than salesmen regularly employed.

- (C) Not later than the fifteenth day. of each month, each Code Member shall also file with the Statistical Bureau, or Bureaus, a statement showing the names and addresses of distributors to whom the Code Member or his sales agents sold coal during the preceding calendar month, the tonnage sold, and the amount of discount allowed to each such distributor.
- 5. A list showing the names and addresses of sales agents and the Code Members for whom such agents act shall be published by the Coal Commission from time to time.
- 6. All agency contracts and other information filed by Code Members in conformity with the foregoing regulations, other than the names and addresses of sales agents, shall be held by the Coal Commission as the confidential records of said parties and shall not be made public without the consent of the Code Member from whom the same shall have been obtained, except where such disclosure is required in any proceeding before the Coal Commission by way of enforcement of the Act or upon the order of any court of competent jurisdiction.
- 7. From and after twenty (20) business days following the effective date of these Marketing Rules and Regulations no Code Member or sales agent of Code Member shall allow or pay, directly or indirectly, any commission or compensation to any sales agent
- (a) Unless the contract of agency shall have been filed with the Coal Commission, as hereinbefore required, and
- (b) Unless the sales agent shall have agreed, in writing, with the Code Member to conform to and observe the minimum and maximum prices and Marketing Rules and Regulations established by the Coal Commission and the Fair Trade Practice Provisions of the Act, as well as all proper Orders of the Commission, and
- (c) Unless the sales agent shall have in good faith complied with the agreement as in paragraph (b) above provided.
- 8. No commission shall be paid to a sales agent by a Code Member where the coal is delivered or sold to any person who owns such sales agent or who, financially or otherwise, controls such agent.

Section III.—Discounts

1. No Code Member or sales agent of a Code Member shall pay or allow any discount from minimum prices to any person unless such person has been registered by the Coal Commission as auSection IV .- Quotations, Options and **Contracts**

- 1. Subject to further order of the Coal Commission, no Code Member or sales agent of a Code Member shall enter into any agreement or order for the sale of coal providing for delivery for a period in excess of that authorized for a spot order, and no prices shall be less than the applicable minimum prices in effect at the time of the making of the agreement: Provided, however, that contracts for periods not exceeding one (1) year may be made with agencies of the Federal Government or with such agencies of State or local governments, as are required by law to purchase coal for periods in excess of thirty (30) days, at the following applicable minimum prices:
- (a) For deliveries during the first thirty (30) days of the contract, at not less than the applicable minimum prices in effect at the time of the making of the agreement:
- (b) For deliveries thereafter, at not less than the applicable minimum prices in effect at the time of delivery if such price is higher than the contract price.

In the case of Governmental Agencies, options may be given for a period not exceeding forty-five (45) days. Subject to further order of the Coal Commission, no option for the sale of coal my be given, except as herein specifically provided.

- 2. Upon the revocation or suspension of Rule 1 of this Section, Code Members or sales agents of Code Members may thereafter enter into contracts for the sale and delivery of coal at prices not less than the minimum price in effect at the time of the making of the contract, upon the following conditions:
- A. No contract for the sale of coal shall provide for delivery over a period in excess of twelve (12) months, except by special permission from the Coal Commission upon a showing of the necessity of meeting long term contract competition of oil, gas, or other fuels or forms of power, or for such other reasons as the Commission may deem sufficient.
- B. No contract for the sale of coal shall provide for deliveries to commence at a time later than ninety (90) days from the date upon which such contract was entered into.
- C. All contracts shall be in writing and shall express the entire agreement between the parties. The contract shall clearly state the date of execution, the effective date, the expiration date, the price agreed upon, the terms of payment, the size and grade of coal sold, the number of cars or tonnage to be shipped, the name of the originating mine, and, where the coal is purchased for consumption, the use to which the coal is to be applied. Contracts may also be made either (a) calling for a buyer's entire requirements or a stated percentage of his requirements, showing the maximum tonnage to shall contain a provision to the fore-

a buyer's requirements and specifying the | that any contract or spot order entered tonnage to be shipped with an allowable overshipment or undershipment of not exceeding twenty (20) per cent of the tonnage specified.

The provisions of the rule stated in the foregoing paragraph relating to quantity shall not apply to contracts made with agencies of the Federal, State or local Governments.

- D. Every contract shall express the entire agreement between the parties and no modification thereof shall be made except by written agreement which shall conform to all the requirements set forth in these rules and regulations.
- E. Each contract shall contain the following provisions, the meaning and effect of which shall not be changed or altered by any other provision of the contract:
- "1. This contract and the performance of all provisions thereof are expressly subject to the Bituminous Coal Act of 1937 and the lawful orders and regulations issued thereunder by the National Bituminous Coal Commission.
- "2. No shipment consigned to any destination point may be diverted or reconsigned without the consent of the seller confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the minimum price prescribed for such coal for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.
- "3. The coal shipped pursuant to this contract is sold and purchased upon the following conditions:
- "(1) If the coal is sold for consumption at the applicable minimum price, it shall be used in the plant or plants named herein and for the use stated herein;
- "(2) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied."
- F. In any case where a contract is made by a sales agent or a Code Member, such sales agent shall not exercise the rights of the seller as defined in Item E (2) of rule 2 of this section without first securing the consent of the Code Member producing such coal to be confirmed in writing.
- G. Upon the revocation or suspension of Rule 1 of this Section, quotations and options for the sale of coal may be given for a period not exceeding fourteen (14) days. If the minimum price is increased beyond the quoted price within such fourteen (14) days, any quotation or option not accepted or exercised prior to the effective date of the price change shall, without notice. be considered withdrawn and no longer effective. Every quotation or option

into thereunder shall be subject to these Marketing Rules and Regulations.

- H. The provisions of this Rule 5 shall not apply to sealed bids on business of the United States Government or States or political subdivisions thereof, in which cases quotations and options at not less than the minimum price in effect at the time the bid is filed may be given for a period not exceeding forty-five (45) days from the final filing date of bids.
- 3. A report of every commitment shall be filed by the Code Member of his sales agent with the Statistical Bureau or Bureaus within fifteen (15) business days from the date of the making of the agreement. Such reports shall set forth all the terms and conditions of the commitment. A true copy of every contract and of any agreement for modification thereof shall be filed with the Statistical Bureau within fifteen (15) business days from the date of execution of such contract or agreement for modification: Provided, however, that a report of the commitment need not be filed if a copy of the contract is filed with fifteen business days.

Section V.—Spot Orders

- 1. A spot order shall be in writing or confirmed in writing within five (5) business days from the date of the making thereof.
- 2. Each spot order shall be subject to the following conditions which shall either be endorsed upon the form of the order or upon the written confirmation thereof by the Code Member or his sales agent, the meaning and effect of which shall not be changed or altered by any other provision of the order:
- "(a) No shipment consigned to any destination may be diverted or reconsigned without the consent of the seller to be confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the minimum price prescribed for such coal for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.
- "(b) The coal shipped pursuant to this order is sold and, purchased upon the following conditions:
- "(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated
- "(2) In case of diversion by the buyer to a use other than that stated herein. the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied."
- 3. In any case where a sale is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in Item 2 (a) be shipped thereunder, or (b) covering going effect and shall further stipulate of this section without first securing the

be confirmed in writing.

4. All the terms and conditions of a sale of coal must be fully and expressly set forth either in the order or in the written confirmation thereof, and such order or written confirmation thereof shall specifically contain all the terms required by Rule 2 (E) of Section IV of these Marketing Rules and Regulations. Within ten (10) business days after the date of the making of the spot order or date of the written confirmation thereof, the Code Member or his sales agent shall file with the Statistical Bureau, or Bureaus, a copy of such spot order or confirmation. Any modification of a spot order must also be made in writing and filed with the Statistical Bureau, or Bureaus, in the same manner.

Section VI.—Use of Coal Analyses

- 1. No analysis of coal shall be utilized by a Code Member or his sales agent, in selling or offering for sale any coal produced by the Code Member, unless such Code Member shall have previously filed with the Statistical Bureau of the Coal Commission and the District Board for the District in which the coal is produced, copies of such analysis, together with a certificate setting forth the time and manner of obtaining the sample analyzed, the name and address of the person or firm making the analysis and stating that such analysis is truly representative of the grade and size of coal as regularly produced by the Code Member. Each such analysis shall be not less than a proximate analysis showing ash, volatile matter, fixed carbon, sulphur and British Thermal units. Each analysis shall further show whether made on an "as received" or moisture "free" basis and if on an "as received" basis, the analysis shall include moisture content.
- 2. All anlyses so filed shall be subject to inspection at the office of the Statistical Bureau at any time during office hours by any interested person, and may be used by the District Board and the Coal Commission in determining from time to time proper classification of the coals produced by the code member.
- 3. Any analysis of the coal of a Code Member made by or on behalf of a consumer and accepted by the Code Member as a basis for an adjustment of price under any contract or order, shall be filed by the Code Member with the proper Statistical Bureau and District Board, within ten (10) days after such adjustment is made and shall be subject to the provisions of Rule 2 herein.
- 4. No agreement or order for the sale of coal produced by a Code Member made upon a premium and penalty basis, shall be entered into or accepted by a Code Member unless the analysis upon which the premium and penalty clause is based has been previously filed as required in Rule No. 1. Such analysis agent except to prepay stations as pubting forth in full the terms of the pre- freight is thus prepaid, the amount claim, setting forth

consent of his Code Member principal to | mium and penalty provisions of the pro- | posed contract or order.

- 5. In the case of premiums and penalty agreements entered into prior to the effective date of these regulations, and claimed to be continuing in effect, the Code Member shall file a statement containing the information required under Rule No. 4, within fifteen (15) days from such effective date.
- 6. From and after the effective date of these rules and regulations, no Code Member shall enter into or perform any agreement made upon a penalty or a premium and penalty basis which will permit the sale of coal at an aggregate contract price below the applicable minimum price established by the Coal Commission for the coal sold and delivered upon such agreement subsequent to said effective date: Provided, that where a Code Member has entered into an agreement made upon a penalty or a premium and penalty basis, this rule shall not be considered as affecting any claim that the buyer might otherwise have had for substandard preparation or quality under Section IX of these Marketing Rules and Regulations.

Section VII.—Terms of Payment

The price and fair trade practice provisions of the Act shall not be evaded or violated by a Code Member, or his sales agent through the use of terms of payment, and in no instance shall terms of payment be more favorable than the following:

- 1. The date of payment shall be within thirty (30) days from the date of shipment.
- 2. Invoices shall be paid in full in United States currency, or funds equivalent thereto, not later than the due date. No portion of the sale price may be withheld by agreement between the buyer and the seller based upon any unadjusted claim of the buyer.

No sale, delivery, or offer for sale of coal shall be made upon any condition, expressed or implied, that any portion of the sale price may be withheld by the buyer, or deposited in escrow, or made subject to rebate or refund by the seller, pending or based upon a determination of the constitutionality of any provision of the Act, of the jurisdiction of the Coal Commission, or of the validity or applicability of any order of the Coal Commission.

- 3. Where payment is made by note, trade acceptance or other form of indebtedness or where payment is made under any circumstances, after the due date of the account, the seller shall charge and the buyer shall pay interest from and after due date of account at the current rate in the locality to which the coal is shipped to the vendee.
- 4. Freight on rail shipments shall not be paid by a Code Member or his sales ing an authentic copy of the buyer's claim shall be accompanied by a statement set- lished in current railway tariffs. Where ducer's views as to the validity of the

thereof shall immediately upon receipt of freight bill or notice of sight draft payment, be invoiced to the buyer for immediate payment.

5. The agreement by a Code Member, express or implied, to extend credit for a period longer than that authorized by these rules and regulations shall constitute a violation of the code.

Section VIII.—Miscellaneous

- 1. No deduction or allowance from invoice prices shall be granted by any code member or his sales agent to any purchaser for advertising.
- 2. Code Members (or their agents or representatives) either individually or collectively, with or without financial participation by retailers of coal, may conduct advertising campaigns seeking to increase the use of coal. The amount of expenditures incurred by a code member, his agent or representative for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.
- 3. Where coal is refused by a consignee in transit or at destination, the Code Member may sell the same at the best obtainable price; Provided, that in each case the code member shall file with the Statistical Bureau, within five (5) days from the date of such resale a statement giving the name and address of the consignee and the reasons for the refusal, the price at which the coal was originally sold, the name and address of the purchaser upon resale and the price received by the seller upon resale, a copy of the carrier's notice of refusal. or notice of reconsignment and such other pertinent facts as may be offered in proof of the necessity of such resale, and that in making such resale the provisions of the Code and the Marketing Rules and Regulations of the Coal Commission other than as to price have not been violated or evaded.
- 4. All code members shall promptly furnish to the Statistical Bureau of the Coal Commission for the District in which the coal originated, full reports of all reconsignments and shall authorize the carrier making such reconsignments to furnish complete information thereon to such Statistical Bureau.
- 5. No allowance shall be made for any shipment of coal of substandard preparation or quality unless formal claim duly executed by or on behalf of the buyer and verified by affidavit setting forth the amount claimed by way of allowance and reasons for the claim is filed with the Code Member or his sales agent within ten (10) days after the receipt of the coal.

The Code Member or sales agent with whom such claim for allowance is filed shall immediately notify the Statistical Bureau and the District Board, furnishtogether with a statement of the pro-

- (a) the name and address of the consignee and the reason for the allowance.
- (b) the amount of allowance or adjustment made
 - (c) the price at which the coal was sold
 - (d) the tonnage delivered
- (e) the name of the mine and the Code Member \cdot
 - (f) date of shipment
- (g) grade and size of coal and destination
- (h) a statement that the adjustment has not been made with the purpose or intent of evading the price or fair trade practice provisions of the Act.

Degradation in respect to sizes incident to its shipment and handling in the normal course of distribution in the regular retail channels of 3% of all sizes other than slack, is deemed to be standard or average and no adjustments or allowances shall be made for degradation except in excess of the said 3%.

- 6. The screening of mine run or rescreening of other grades of coal sold and billed as such for the buyer's account for the purpose of keeping the resultant products separate in the shipment thereof is prohibited. All coal must be sold and invoiced on a price per ton basis, under the designation shown therefor in the price schedule published by the Coal Commission.
- 7. All coal confiscated or lost in transit shall be invoiced to the carrier at not less than the minimum price established for such coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or loss, whichever may be the higher.
- 8. No substitution of grades or sizes of higher price coal may be made, except for railroad locomotive fuel, on spot orders or contracts, unless the higher price be applied to such substituted size. Substitution on orders for railroad locomotive fuel may be made only upon the following conditions:
- (a) The proposed substitution shall not be an express or implied condition of the order or contract.
- (b) The coal substituted must be coal which the Code Member has already produced and loaded into transportation facilities and which cannot be sold promptly by the exercise of the usual sales effort, such substitution to be limited to a specific tonnage for shipment on a specific order and from a specific mine.
- (c) The substitution must be reasonably necessary as an emergency measure in order to continue operation of the mine of the Code Member.
- (d) The substitution shall be acceptable to the purchaser of the coal, and shall not be made with the purpose or effect of conferring any advantage on the purchaser or securing any preference or advantage for the Code Member over his competitors.

- 9. Every sales agent shall cause to be clearly set forth upon any form of solicitation, order, invoice and statement covering coal offered for sale or sold, the following:
- (1) Either the name of the producer or
- (2) The trade name established and generally used by the producer in designation of coal produced from the mine from which shipment was made or is to be made.
- 10. Failure to file information required by the within Marketing Rules and Regulations or the filing of false information, wilfully made will subject the party failing to file the information required or the party so filing, to the penalties of the Act and other penalties imposed by law.
- . 11. These Marketing Rules and Regulations are subject to revision and amendment by further order of the Coal Commission.

MINIMUM PRICE AREA NO. 9—DISTRICT BOARD NO. 22

PROPOSED MARKETING RULES AND REGULA-TIONS

The witness for District Board No. 22, properly qualified as an expert in the marketing of coal in that District, incroduced into evidence as Exhibit No. 194, rules and regulations proposed by District Board No. 22 in compliance with Commission Order No. 244.

The witness testified that upon receipt of Order No. 244, the District Board took the former marketing rules and regulations which were in effect from January 3 to February 25, 1938 and, using these as a basis, formulated the rules and regulations which were proposed to the Commission on August 9, 1938.

District Board No. 22 proposes the following definition of a "sales agent";

"A 'sales agent' is a person who as agent, in law or in fact, sells coal for or on behalf of a Code Member."

For the reasons hereinbefore set forth in the findings of fact for District No. 17, we are of the opinion that this definition should be modified in the manner outlined in the composite findings subsequently given.

For the purposes of clarification, paragraph 3 of Section I has been modified to read as follows:

"A commission is the total of all compensations and allowances received by a sales agent from a Code Member for services rendered in the sale of coal."

For the same reasons outlined in the findings of fact for District No. 17, paragraphs 4 and 5 of Section I should be deleted and the definition of a "registered distributor", as later shown in the composite findings for District No. 22, should be substituted.

The definitions of "wholesale discount" and "retailing", contained in paragraphs 6 and 7 in Section I, should likewise be deleted for the reasons set forth in the findings of fact hereinbefore stated for District No. 17.

We are of the opinion that definitions 17 to 22, contained in Section I of the composite findings hereinafter given, are reasonable and desirable. The District Board did not define these terms, although they appear in various rules proposed by the Board.

For the reasons hereinbefore stated in the findings of fact for District No. 17, we are of the opinion that Section II, in its entirety, should be modified in the same manner as Section II of the proposed rules and regulations for District No. 17. Furthermore, we are of the opinion that Rule 6 of Section V, in so far as it pertains to sales agents, should properly be contained in Section II, which is entitled "Sales Agents".

The witness testified that, in his opinion, the rules in Sections III and IV. pertaining to the registration of wholesalers and farmers' cooperative organizations, should be deleted. The witness was of the opinion, however, that persons should be required to register with the Commission before receiving any discount. With respect to discounts, the witness further testified that Rule 5 of Section V was meant to cover only discounts and not commissions. Rules pertaining to discounts should properly be proposed in the discount hearing which the Commission has opened and which has, at the present time, been continued. Furthermore, Order No. 244 directed the District Boards to propose reasonable rules and regulations governing the sale and distribution of coal by Code Members, and any rules purporting to regulate persons entitled to receive discounts are not properly submitted in this hearing. For those reasons, and for the reasons hereinbefore stated in the findings of fact for District No. 17, we are of the opinion that Sections III, IV and V of the proposed rules and regulations for District No. 22, with the exception of the unfair methods of competition, should be modifled and combined into one section as follows: .

Discounts

- "1. No Code Member or sales agent of a Code Member shall pay or allow any discount from minimum prices to any person unless such person has been registered by the Coal Commission as authorized to receive such discount at the time of the sale."
- "2. Code Members or their sales agents may allow discounts from minimum prices on sales of coal to registered distributors, not in excess of the maximum discount or price allowances prescribed by the Coal Commission upon such sales."

We are of the opinion that Section VI, in its entirety, should be modified and clarified in the same manner and for the same reasons hereinbefore set forth in the findings of fact for District No.

For the reasons hereinbefore set forth in the findings of fact for District No. 17, we are of the opinion that Rule 2 (a) of Section VII should be deleted and Rules 1, 2 (b) and 2 (c) should be modified in the manner set forth in the composite findings later outlined for District No. 22.

The District Board in Rules 4 and 5 of Section VIII provides that where agreements for the sale of coal are entered into upon a premium and penalty basis, a statement setting forth the full terms of the premium and penalty provisions shall be filed with the Statistical Bureau. We are of the opinion that as a matter of law no Code Member may enter into or perform any agreement made upon a premium or a premium and penalty basis which will permit the sale of coal at an aggregate contract price below the applicable minimum price for the coal sold and delivered after the effective date of these rules and regulations, although the buyer, under any premium and penalty contract, may nevertheless be entitled to a claim for substandard preparation or quality.

Rule 4 of Section IX does not indicate as to what time interest at the current market rate should be charged where payment is made by note, trade acceptance or other form of indebtedness. For the purpose of clarification, we believe the rule should be modified so as to provide that interest shall be charged from the due date of the account.

We are of the opinion that this rule should likewise be modified so as to provide that where payment is made under any circumstances after the due date of the account, interest must be charged. An unreasonable discrimination appears in this rule as it was proposed by the Board in that no provision is made for the charging of interest in a case where payment is not made at the due date of the account whether by default of the buyer or pursuant to an agreement for an extension of the term of credit and where such extension of the term of credit is not evidenced by a note, trade acceptance or other form of indebtedness.

While the District Board proposed in Section IX, relating to Terms of Payment, that the price and fair trade provisions of the Act shall not be violated by the use of terms of payment and that in no instance shall be terms of payment be more favorable than as specified in the rules, the District Board did not propose any specific rule making the agreement, express or implied, to extend credit for a period of longer than that authorized by the rules, a violation of the Code. We are of the opinion that such a rule is necessary in order fully to effectuate the rules proposed by the District Board relating to terms of payment.

We are of the opinion that Rule 6 of Section XI should be modified to provide that all coal must be sold and invoiced on a price per ton basis. This modification, in our opinion, is necessary for a uniform procedure and method to govern the selling and invoicing of coal. We believe this rule is necessary or otherwise the Commission must either establish supplementary prices based simply on thermal efficiency or else the Commission must undertake to translate sales made on such a basis into a price per ton basis in order to determine whether the minimum price has been violated or evaded.

For the reasons hereinbefore set forth in the findings of fact for District No. 17, we are of the opinion that Rules 3, 5 and 7 of Section XI should be modified and clarified in the manner set forth in the composite findings subsequently given.

The witness stated that he was of the opinion that the rules set forth in Exhibit No. 191 are reasonable and necessary for District No. 22. Rule 11 of Section XI of Exhibit No. 191 provides as follows:

"Every wholesale dealer, distributor or sales agent, shall cause to be clearly set forth upon any form of solicitation, order, invoice and statement covering coal offered for sale or sold, the following:

(1) Either the name of the producer, or

(2) the trade name established and generally used by the producer in designation of coal produced from the mine from which shipment was made or is to be made."

The rule cannot be directed against distributors at this hearing, but we are of the opinion that this rule is desirable and reasonable with reference to sales agents and should be included in the rules and regulations for District No. 22.

We are of the opinion that the second paragraph of Rule 8 (e) of Section XI should be deleted for the reason that it is impractical to enforce. Likewise, Rule 8 (f) of Section XI should be deleted for the reason that it creates an unreasonable discrimination.

The witness for District Board No. 22 testified generally that the rules proposed by the District Board were reasonable, not inconsistent with the requirements of Section 4 of the Act, and in conformance with the standards of fair competition contained in the Act, although the witness, on examination, likewise testified that certain clarifications and modifications of such rules would, in his opinion, be desirable. Except as to those rules which we have already stated should be modified, we are of the opinion that the rules proposed by the District Board are in accordance with the above requirements.

Accordingly, we find that the following rules and regulations incidental to the sale and distribution of coal by Code Members in District No. 22 are reason-

We are of the opinion that Rule 6 of able, not inconsistent with the requireection XI should be modified to provide ments of Section 4 of the Act, and in contact all coal must be sold and invoiced a price per ton basis. This modifica-

> MARKETING RULES AND REGULATIONS INCI-DENTAL TO THE SALE AND DISTRIBUTION OF COAL BY CODE MEMBERS WITHIN DIS-TRICT NO. 22 AS PROPOSED BY DISTRICT BOARD NO. 22 AND AS APPROVED, DISAP-PROVED, OR MODIFIED FOR THE PURPOSE OF COORDINATION

Section I .- Definitions

- 1. The term *Person* as used herein, includes individuals, firms, associations, partnerships, corporations, trusts, trustees, cooperatives, receivers and trustees and trustees in bankruptcy and in other legal proceedings, and any other recognized forms of business organizations.
- 2. A Sales Agent is a person who, as agent of a code member (and therefore without purchasing the coal), sells coal produced by such code member for him or on his behalf; provided, that "Sales Agent" shall not include an individual (herein referred to as a "salesman") regularly and continuously employed by a code member, and who regularly devotes the major portion of his time to the solicitation of purchases of coal produced by his code member employer.

3. A Commission is the total of all compensations and allowances received by a sales agent from a code member for services rendered in the sale of coal.

- 4. A Registered Distributor is a person who has been duly registered by the Coal Commission pursuant to the rules and regulations prescribed by the Commission for the administration of Section 4 II (h) of the Act.
- 5. A Spot Order is a legal obligation for the sale and purchase of coal, the delivery of which is stipulated to be made within not more than thirty (30) days from the date upon which the order was accepted.
- 6. A Contract is a legal obligation for the sale and purchase of coal, the deliveries of which are stipulated to be made during a period longer than that specified for a spot order.
- 7. A Commitment is a contract or spot order after a quotation is accepted or an option is exercised and not reduced to writing.
- 8. A Quotation is an offer for the sale of coal at a price which the offerer may withdraw prior to its being acted upon by the offeree.
- 9. An Option is an offer for the sale of coal at a price to be accepted within a time certain, during which time the offerer may not withdraw the offer without consent of the offeree.
- 10. Coal Commission as used herein, shall mean the National Bituminous Coal Commission established under the provisions of the Bituminous Coal Act of 1937.
- 11. Act as used herein, shall mean the Bituminous Coal Act of 1937.
- the sale and distribution of coal by Code 12. District Board as used herein, shall Members in District No. 22 are reasonmean any District Board established un-

der the provisions of Section 4 Part I (a) | agent's commission. Certifled copies of | before the Coal Commission by way of of the Act.

- 13. Statistical Bureau shall mean, unless otherwise specifically stated, the statistical bureau of the Commission for the district in which the coal involved in any transaction is produced, or the district in which is located a mine of a code member affected by any order or regulation.
- 14. Minimum Price shall mean a minimum price established and made effective by the Coal Commission.
- 15. Maximum Price shall mean a maximum price established and made effective by the Coal Commission.
- 16. Registration and Register as used herein, shall refer to registration with the Coal Commission pursuant to rules and regulations prescribed by the Commission for the administration of Section 4 of the Act.
- 17. The term Producer includes all individuals, firms, associations, corporations, trustees, and receivers engaged in the busines of mining coal.
- 18. The terms Reconsignment and Diversion as used herein shall mean the change in the original consignee or in the destination or route.
- A Code Member means a producer who has accepted and holds membership in the Bituminous Coal Code promulgated under the Bituminous Coal Act of 1937.
- 20. Coal as used herein shall mean bituminous coal.
- 21. The term Bituminous Coal includes all bituminous, semi-bituminous, and sub-bituminous coal and shall exclude lignite, which is defined as a lignitic coal having calorific value in British thermal units of less than seven thousand six hundred per pound and having a natural moisture content in place in the mine of 30 per centum or
- 22. The term Control means the nossession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Section II.—Sales Agents

- 1. All appointments of sales agents by code members or their agents or authorized representatives, and the terms and conditions of such appointments shall be subject to the Marketing Rules and Regulations from time to time established by the Coal Commission.
- 2. Each code member shall be responsible for the compliance by all his sales agents and agents and employees of sales agents with the provisions of the Bituminous Coal Code and of all rules and regulations, promulgations and determinations of the Coal Commission.
- 3. (A) Every contract for the appointment of a sales agent by Code Members or by agents or authorized representatives of Code Members, or any modification thereof, shall be in writing, and shall fully set forth therein all the terms and conditions of such contract, includ-

- all such agency contracts entered into on or prior to the effective date of the establishment of these rules and regulations and in effect on such date, shall be filed by the Code Member with the Statistical Bureau, or Bureaus, within twenty (20) business days after such date.
- (B) Certified copies of all contracts appointing sales agents or of agreements modifying any sales agency contract, entered into subsequent to the effective date of these rules and regulations, shall be similarly filed by the Code Member within ten (10) business days after the date upon which such contracts or agreements have been entered into.
- (C) Upon the expiration, termination, or rescission of any sales agency contract, the Code Member principal shall make a report thereof to the Statistical Bureau, or Bureaus, within ten (10) business days after the date of such expiration, termination, or rescission.
- 4. (A) As to all coal sold by a Code Member otherwise than through a sales agent or through an employee regularly employed as a salesman by the Code Member, such Code Member shall, not later than the fifteenth day of each month, file with the Statistical Bureau, or Bureaus, a list of all persons through whom, directly or indirectly, any such coal was sold during the preceding calendar month, with a statement of the duration and character of their employment, the tonnage sold by, and the rate and amount of compensation paid to, each of them.
- (B) Not later than the fifteenth day of each month, each Code Member shall also file with the Statistical Bureau, or Bureaus, similar information obtained from his sales agents concerning sales of coal made during the preceding calendar month, by the sales agents' representatives and employees other than salesmen regularly employed.
- (C) Not later than the fifteenth day of each month, each Code Member shall also file with the Statistical Bureau, or Bureaus, a statement showing the names and addresses of distributors to whom the Code Member or his sales agents sold coal during the preceding calendar month, the tonnage sold, and the amount of discount allowed to each such distributor.
- 5. A list showing the names and addresses of sales agents and the Code Members for whom such agents act shall be published by the Coal Commission from time to time.
- 6. All agency contracts and other information filed by the Code Members in conformity with the foregoing regulations, other than the names and addresses of sales agents, shall be held by the Coal Commission as the confidential records of said parties and shall not be made public without the consent of the Code Member from whom the same shall have been obtained, except where such ing the amount or basis of the sales disclosure is required in any proceeding entered into on the predate.

- enforcement of the Act or upon the order of any court of competent jurisdiction.
- 7. From and after twenty (20) business days following the effective date of these Marketing Rules and Regulations no Code Member or sales agent of Code Member shall allow or pay, directly or indirectly, any commission or compensation to any sales agent
- (a) Unless the contract of 'agency shall have been filed with the Coal Commission, as hereinbefore required, and
- (b) Unless the sales agent shall have agreed, in writing, with the Code Member to conform to and observe the minimum and maximum prices and Marketing Rules and Regulations established by the Coal Commission and the Fair Trade Practice Provisions of the Act, as well as all proper Orders of the Commission, and
- (c) Unless the sales agent shall have in good faith complied with the agreement as in paragraph (b) above provided.
- 8. No commission shall be paid to a sales agent by a Code Member where the coal is delivered or sold to any person who owns such sales agent or who, financially or otherwise, controls such agent. Section III .- Discounts and Allowances

As provided in Section 4, Part II (i) of the Act, the following practices with respect to coal shall be unfair methods of competition and shall constitute violations of the code:

- 1. The consignment of unordered coal, or the forwarding of coal which has not actually been sold, consigned to the producer or his agent: Provided, however, that coal which has not actually been sold may be forwarded, consigned to the producer or his agent at rail or track yards, tidewater ports, river ports, or lake ports, or docks beyond such ports, when for application to any of the following classes: Bunker coal, coal applicable against existing contracts, coal for storage (other than in railroad cars) by the producer or his agent in rail or track yards or on docks, wharves, or other yards for resale by the producer or his agent.
- 2. The adjustment of claims with purchasers of coal in such manner as to grant secret allowances, secret rebates, or secret concessions, or other price discrimination.
- 3. The prepayment of freight charges with intent to or having the effect of granting a discriminatory credit allowance.
- 4. The granting in any form of adjustments, allowances, discounts, credits, or refunds to purchasers or sellers of coal, for the purposes or with the effect of altering retroactively a price previously agreed upon, in such manner as to create price discrimination.
- 5. The predating or postdating of any invoice or contract for the purchase or sale of coal, except to conform to a bona fide agreement for the purchase or sale

- 6. The payment or allowance in any form or by any device of rebates, refunds, credits, or unearned discounts, or the extension to certain purchasers of services or privileges not extended to all purchasers under like terms and conditions, or under similar circumstances.
- 7. The attempt to purchase business, or to obtain information concerning a competitor's business by concession, gifts, or bribes.
- 8. The intentional misrepresentation of any analysis or of analyses, or of sizes, or the intentional making, causing, or permitting to be made, or publishing, of any false, untrue, misleading, or deceptive statement by way of advertising, invoicing, or otherwise concerning the size, quality, character, nature, preparation, or origin of any coal bought, sold, or consigned.
- 9. The unauthorized use, whether in written or oral form, of trademarks, trade names, slogans, or advertising matter already adopted by a competitor, or any deceptive approximation thereof.
- 10. Inducing or attempting to induce, by any means or device whatsoever, a breach of contract between a competitor and his customer during the term of such contract.
- 11. Splitting or dividing commissions. brokers' fees, or brokerage discounts, or otherwise in any manner directly or indirectly using brokerage commissions or jobbers' arrangements or sales agencies for making discounts, allowances, or rebates, or prices other than those determined under this Act, to any industrial consumer or to any retailers, or to others, whether of a like or different
- 12. Selling to, or through, any broker, jobber, commission account, or sales agency, which is in fact or in effect an agency or an instrumentality of a retailer or an industrial consumer or of any organization of retailers or industrial consumers, whereby they or any of them secure either directly or indirectly a discount, dividend, allowance, or rebates, or a price other than that determined in the manner prescribed by this Act.
- 13. Employing any person or appointing any sales agent; at a compensation obviously disproportionate to the ordinary value of the service or services rendered, and whose employment or appointment is made with the primary intention and purpose of securing preferment with a purchaser or purchasers of coal.
- 1. No Code Member or sales agent of a Code Member shall pay or allow any discount from minimum prices to any person unless such person has been registered by the Coal Commission as authorized to receive such discount at the time of the sale.
- 2. Code Members or their sales agents may allow discounts from minimum prices on sales of coal to registered distributors, not in excess of the maximum the coal is purchased for consumption, beyond the quoted price within such

discount or price allowances prescribed the use to which the coal is to be applied. by the Coal Commission upon such sales.

Section IV .- Quotations, Options and Contracts

- 1. Subject to further order of the Coal Commission no Code Member or sales agent of a Code Member shall enter into any agreement or order for the sale of coal providing for delivery for a period in excess of that authorized for a spot order, and no prices shall be less than the applicable minimum prices in effect at the time of the making of the agreement: Provided, however, that contracts for periods not exceeding one (1) year may be made with agencies of the Federal Government or with such agencies of State or local governments, as are required by law to purchase coal for periods in excess of thirty (30) days, at the following applicable minimum
- (a) For deliveries during the first thirty (30) days of the contract, at not less than the applicable minimum prices in effect at the time of the making of the agreement;
- (b) For deliveries thereafter, at not less than the applicable minimum prices in effect at the time of delivery, if such price is higher than the contract price.
- In the case of Governmental Agencies, options may be given for a period not exceeding forty-five (45) days. Subject to further order of the Coal Commission, no option for the sale of coal may be given, except as herein specifically provided.
- 2. Upon the revocation or suspension of Rule 1 of this Section, Code Members or sales agents of Code Members may thereafter enter into contracts for the sale and delivery of coal at prices not less than the minimum price in effect at the time of the making of the contract, upon the following conditions:
- A. No contract for the sale of coal shall provide for delivery over a period in excess of twelve (12) months, except by special permission from the Coal Commission upon a showing of the necessity of meeting long term contract competition of oil, gas, or other fuels or forms of power, or for such other reasons as the Commission may deem appropriate in order to further the effectual administration of the Act.
- B. No contract for the sale of coal shall provide for deliveries to commence at a time later than ninety (90) days from the date upon which such contract ber, such sales agent shall not exercise was entered into.
- C. All contracts shall be in writing and shall express the entire agreement between the parties. The contract shall clearly state the date of execution, the effective date, the expiration date, the price agreed upon, the terms of payment, the size and grade of coal sold, the number of cars or tonnage to be shipped, the for a period not exceeding fourteen (14) name of the originating mine, and, where

Contracts may also be made either (a) calling for a buyer's entire requirements or a stated percentage of his requirements, showing the maximum tonnage to be shipped thereunder, or (b) covering a buyer's requirements and specifying the tonnage to be shipped with an allowable overshipment or undershipment of not exceeding twenty (20) per cent of the tonnage specified.

The provisions of the rule stated in the foregoing paragraph relating to quantity shall not apply to contracts made with agencies of the Federal, State or local Governments.

- D. Every contract shall express the entire agreement between the parties and no modification thereof shall be made except by written agreement which shall conform to all the requirements set forth in these rules and regulations.
- E. Each contract shall contain the following provisions, the meaning and effect of which shall not be changed or altered by any other provision of the contract:
- "1. This contract and the performance of all provisions thereof are expressly subject to the Bituminous Coal Act of 1937 and the lawful orders and regulations issued thereunder by the National Bituminous Coal Commission.
- "2. No shipment consigned to any destination point may be diverted or reconsigned without the consent of the seller confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the minimum price prescribed for such coal for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.
- "3. The coal shipped pursuant to this contract is sold and purchased upon the following conditions:
- "(a) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein:
- "(b) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied."
- F. In any case where a contract is made by a sales agent of a Code Memthe rights of the seller as defined in Item E (2) of Rule 2 of this section without first securing the consent of the Code Member producing such coal to be confirmed in writing.
- G. Upon the revocation or suspension of Rule 1 of this Section, quotations and options for the sale of coal may be given days. If the minimum price is increased

fourteen (14) days, any quotation or op- | cable minimum price for such coal at the tion not accepted or exercised prior to the effective date of the price change is actually applied." shall, without notice, be considered withdrawn and no longer effective. Every quotation or option shall contain a provision to the foregoing effect and shall further stipulate that any contract or spot order entered into thereunder shall be subject to these Marketing Rules and Regulations.

H. The provisions of this Rule 2 G shall not apply to sealed bids on business of the United States Government or States or Political subdivisions thereof, in which cases quotations and options at not less than the minimum price in effect at the time the bid is filed may be given for a period not exceeding forty-five (45) days from the final filing date of bids.

3. A report of every commitment shall be filed by the Code Member or his sales agent with the Statistical Bureau or Bureaus within fifteen (15) business days from the date of the making of the agreement. Such reports shall set forth all the terms and conditions of the commitment. A true copy of every contract and of any agreement for modification thereof shall be filed with the Statistical Bureau within fifteen (15) business days from the date of execution of such contract or agreement for modification: Provided, however, that a report of the commitment need not be filed if a copy of the contract is filed within fifteen (15) business days.

Section V.—Spot Orders

- 1. A spot order shall be in writing or confirmed in writing within five (5) business days from the date of the making thereof.
- 2. Each spot order shall be subject to the following conditions which shall either be endorsed upon the form of the order or upon the written confirmation thereof by the Code Member or his sales agent, the meaning and effect of which shall not be changed or altered by any other provision of the order:
- "(a) No shipment consigned to any destination may be diverted or reconsigned without the consent of the seller confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the minimum price prescribed for such coal for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.
- "(b) The coal shipped pursuant to this order is sold and purchased upon the following conditions:
- "(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein:
- "(2) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writbuyer shall pay not less than the appli- provisions of Rule No. 2 herein.

- time of diversion for the use to which it
- 3. In any case where a sale is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in Item 2 (a) of this section without first securing the consent of his Code Member principal to be confirmed in writing.
- 4. All the terms and conditions of a sale of coal must be fully and expressly set forth either in the order or in the written confirmation thereof, and such order or written confirmation thereof shall specifically contain all the terms required by Rule 2 (a) of Section IV of these marketing rules and regulations. Within ten (10) business days after the date of the making of the spot order or date of the written confirmation thereof. the Code Member or his sales agent shall file with the Statistical Bureau or Bureaus a copy of such spot order or confirmation. Any modification of a spot order must also be made in writing and filed with the Statistical Bureau or Bureaus in the same manner.

Section VI.—Use of Coal Analyses

- 1. No analysis of coal shall be utilized by a Code Member or his sales agent in selling or offering for sale any coal produced by the Code Member, unless such Code Member shall have previously filed with the Statistical Bureau of the Coal Commission and the District Board for the district in which the coal is produced copies of such analysis, together with a certificate setting forth the time and manner of obtaining the sample analyzed, the name and address of the person or firm making the analysis and stating that such analysis is truly representative of the grade and size of coal as regularly produced by the Code Member. Each such analysis shall be not less than a proximate analysis showing ash, volatile matter, fixed carbon, sulphur and British Thermal Units and ash softening temperature. Each analysis shall further show whether made on an "as received" or moisture "free" basis and if on an "as received" basis, the analysis shall include moisture content.
- 2. All analyses so filed shall be subject to inspection at the office of the statistical bureau at any time during office hours by any interested person. and may be used by the District Board and the Coal Commission in determining from time to time proper classifications of the coals produced by the Code Member.
- 3. Any analysis of the coal of a Code Member made by or on behalf of a consumer and accepted by the Code Member as the basis for an adjustment of price under any contract or order shall be filed by the Code Member with the proper Statistical Bureau and District Board, within ten (10) days after such adjusting and the seller shall charge and the | ment is made and shall be subject to the

- 4. No agreement or order for the sale of coal produced by a Code Member, made upon a premium and penalty or penalty basis, shall be entered into or accepted by a Code Member unless the analysis upon which the premium and penalty clause is based has been previously filed as required in Rule 1. Such analysis shall be accompanied by a statement setting forth in full the terms of the premium and penalty provisions of the proposed contract or order.
- 5. In the case of premium and penalty agreements entered into prior to the effective date of these regulations, and claimed to be continuing in effect, the Code Member shall file a statement containing the information required under Rule 4, within fifteen (15) days from such effective date.
- 6. From and after the effective date of these rules and regulations, no Code Member shall enter into or perform any agreement made upon a penalty or a premium and penalty basis which will permit the sale of coal at an aggregate contract price below the applicable minimum price established by the Coal Commission for the coal sold and delivered upon such agreement subsequent to said effective date: provided, that where a Code Member has entered into an agreement made upon a penalty or a premium and penalty basis, this rule shall not be considered as affecting any claim that the buyer might otherwise have had for substandard preparation or quality under Section IX of these marketing rules and regulations.

Section VII .- Terms of Payment

The price and fair trade practice provisions of the Act shall not be evaded or violated by a Code Member or his sales agent through the use of terms of payment, and in no instance shall terms of payment be more favorable than the following:

- 1. On rail shipments the date of payment of invoices for coal sold shall be on or before the twentieth day of the month following shipment.
- 2. On railroad locomotive fuel, the date of payment shall be on or before the twenty-fifth of the month following the date of shipment.
- 3. Payment shall be made in full and on a net cash basis. No portion of the invoice price may be withheld by agreement by reason of any unadjusted claim of the buyer nor shall any portion be withheld or deposited in escrow by reason of any alleged agreement relating to the constitutionality of any provision of the Act or the validity of any order of the Coal Commission.
- 4. Where payment is made by note, trade acceptance or other form of indebtedness, or where payment is made under any circumstances after the due date of the account, the seller shall charge and the buyer shall pay interest from and after due date of the account at the current rate in the locality to which the coal is shipped to the vendee.

- 5. Freight on rail shipments shall not be paid by a Code Member or his sales agent except to prepay stations as published in current railway tariffs or to the United States Government, States or Political subdivisions thereof. Where freight is thus prepaid, the amount thereof shall immediately upon receipt of freight bill or notice of sight draft payment, be invoiced to the buyer for immediate payment.
- 6. The agreement by a Code Member, expressed or implied, to extend the credit for a period longer than that authorized by these rules and regulations, with the effect of violating the price provisions or the unfair methods of competition of the Act, shall constitute a violation of the Code.

Section VIII .- Crushing and Pulverizing Coal

- 1. Each Code Member who maintains and operates at his mine or at any facility used in preparing coals for the market, any crushing or pulverizing device, shall register such device with the Statistical Bureau of the Coal Commission on forms submitted by the Coal Commission.
- 2. Such forms shall include the following:
 - 1. Name and address of code member.
- 2. Name of mine or facility at which device is located.
- 3. Name and style or type of crushing or pulverizing device.
 - 4. Hourly capacity of device.
- 5. Sizes of coal which device can crush and pulverize.
- 6. Sizes of coal resulting from crushing or pulverizing.
- 7. Number of tons crushed in 1936 and in each month of 1937.
- 8. Cost per ton of crushing or pulverizing in 1936.
- 3. Each Code Member shall on or before the tenth (10) days of each succeeding month, file with the Statistical Bureau on forms to be provided by the Coal Commission, a statement verified by affidavit, setting forth the following information for the preceding calendar
- (a) Number of tons of each size crushed or pulverized.
- (b) Number of tons of each size resulting from crushing or pulverizing.

Section IX.—Miscellaneous

- 1. No deduction or allowance from invoice prices shall be granted by any code member or his sales agent to any purchaser for advertising.
- 2. Code members (or their agents or representatives) either individually or collectively, with or without financial participation by retailers of coal, may conduct advertising campaigns seeking to increase the use of coal. The amount of expenditures incurred by a code member, his agent or representative for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.

- 3. Where coal is refused by a consignee in transit or at destination, the Code Member may sell the same at the best obtainable price; Provided, that in each case the Code Member shall file with the Statistical Bureau, within five (5) days from the date of such resale a statement giving the name and address of the consignee and the reasons for the refusal, the price at which the coal was originally sold, the name and address of the purchaser upon resale and the price received by the seller upon resale, a copy of the carrier's notice of refusal or notice of reconsignment and such other pertinent facts as may be offered in proof of the necessity of such resale, and that in making such resale the provisions of the Code and the Marketing Rules and Regulations of the Coal Commission other than as to price have not been violated or evaded.
- 4. All Code Members shall promptly furnish to the Statistical Bureau of the Coal Commission for the District in which the coal originated; full reports of all reconsignments and shall authorize the carrier making such reconsignments to furnish complete information thereon to such Statistical Bureau.
- 5. No allowance shall be made for any shipment of coal of substandard preparation or quality unless formal claim duly executed by or on behalf of the buyer and verified by affidavit setting forth the amount claimed by way of allowance and reasons for the claim is filed with the Code Member or his sales agent within ten (10) days after the receipt of the coal.

The Code Member or sales agent with whom such claim for allowance is filed shall immediately notify the Statistical Bureau and the District Board, furnishing an authentic copy of the buyer's claim together with a statement of the producer's views as to the validity of the claim, setting forth:

- (a) The name and address of the consignee and the reason for the allowance.
- (b) The amount of allowance or adjustment made.
- (c) The price at which the coal was sold.
- (d) The tonnage delivered.
- (e) The name of the mine and the Code Member.
 - (f) Date of shipment.
- (g) Grade and size of coal and destination.
- (h) A statement that the adjustment has not been made with the purpose or intent of evading the price or fair trade practice provisions of the Act.
- 6. The screening of mine run or rescreening of other grades of coal sold and billed as such for the buyer's account for the purpose of keeping the resultant products separate in the shipment thereof is prohibited. All coal must be sold and invoiced on a price per ton basis under the designation shown by the Coal Commission.

- 7. All coal confiscated or lost in transit shall be invoiced to the carrier at not less than the minimum price established for such coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or lost, whichever may be the higher.
- 8. No substitution may be made upon any spot order or contract, of any grade or size of coal taking a minimum price higher than the price specified in such order or contract, except upon the following conditions:
- (a) The proposed substitution shall not be an express or implied condition of the order or contract.
- (b) The coal substituted must be coal which the Code Member has already produced and loaded into transportation facilities and which cannot be sold promptly by the exercise of the usual sales effort, such substitution to be limited to a specific tonnage for shipment on a specific order and from a specific mine.
- (c) The substitution must be reasonably necessary as an emergency measure in order to continue operation of the mine of the Code Member.
- (d) The substitution shall be acceptable to the purchaser of the coal, and shall not be made with the purpose or effect of conferring any advantage on the purchaser or securing any preference or advantage for the Code Member over his competitors.
- (e) Such substitution may be made only with the approval of a duly designated representative of the Commission and in each instance formal application therefor shall be made upon forms provided by the Commission and permits shall be issued prescribing the conditions of substitution in each case approved.
- (f) Copies of substitution permits shall be mailed daily to the office of the District Board and weekly summaries of substitution permits shall be mailed to all District Boards within the Price Area. The Commission may from time to time publish the essential facts as to all substitution permits granted.
- (g) In each case of coal shipped under a substitution permit each invoice shall specifically show the permit number and the size and grade of coal substituted.
- 9. Every sales agent shall cause to be clearly set forth upon any form of solicitation, order, invoice and statement covering coal offered for sale or sold, the following:
 - (1) Either the name of the producer or
- (2) The trade name established and generally used by the producer in designation of coal produced from the mine from which shipment was made or is to be made.
- 40. Failure to file information required by the within Marketing Rules and Regulations of the filing of false informatherefor in the price schedule published tion, wilfully made, will subject the party failing to file the information required

or the party so filing, to the penalties of | it was not the intention of the witness | that a period of twenty (20) days after the Act and other penalties imposed by

11. These Marketing Rules and Regulations are subject to revision and amendment by further order of the Coal Commission.

MINIMUM PRICE AREA NO. 10-DISTRICT BOARD No. 23

PROPOSED MARKETING RULES AND REGULATIONS

A witness for District Board No. 23, properly qualified as an expert in the marketing of coal in that District, introduced into evidence as Exhibit No. 195 the rules and regulations proposed by District Board No. 23 in compliance with Commission Order 244. This witness testified that these rules and regulations were properly submitted to Code Members within said District, and that no protests concerning such proposals were received from Code Members. Accordingly the Board on August 18, 1938. adopted said rules and regulations and later submitted them to the Commission.

District Board No. 23 proposed the following definition of a sales agent, Exhibit No. 195, Section I, paragraph 2:

"A 'sales agent' is a person who as agent, in law or in fact, sells coal for or on behalf of a Code Member."

Rule 4, Section II of Exhibit No. 195. providing for the filing with the Commission of certain data, differentiates a sales agent from a sales representative merely employed as salesman. It is apparent from this rule that the District Board did not intend that a sales representative merely employed as a saleman should be included in the definition of a "sales agent". Furthermore, to prevent the granting of discounts in the form of commissions, we are of the opinion that the definition of a "sales agent" should clearly indicate that persons who purchase coal do not come within the scope of the definition. Therefore, we are of the opinion that the definition of a "sales agent" should be clarified in the same manner as hereinbefore set forth for District No. 17.

For the purpose of clarification, we modify the definition of a "commission" contained in Section I, rule 3, to read as follows:

"A 'commission' is the total of all compensations and allowances received by a sales agent from a Code Member for services rendered in the sale of coal.

The witness for the District Board testified that he was in accord with the reasons expressed by the expert witness for District No. 17, Mr. Thompson, with respect to the deletion of the provisions pertaining to the registration of wholesalers and farmers' cooperative organizations. It was the opinion of Mr. Thompson that rules providing that no discounts should be granted except to persons properly registered with the Com-

that such rules be deleted. Order No. 244 directed various District Boards to propose rules and regulations incidental only to the sale and distribution of coal of Code Members. Any definition purporting to define what persons come within the term "distributor"-as used in Section 4 II (h) is improperly submitted in this hearing, and accordingly the definitions of a "wholesaler" and "farmers' cooperative organization" proposed by the District Board in Section I paragraphs 4 and 5 should be deleted and the following definition of a "registered distributor" should be substituted:

"A 'registered distributor' is a person who has been duly registered by the Coal Commission pursuant to the rules and regulations prescribed by the Commission for the administration of Section 4 II (h) of the Act."

We are of the opinion that the definition of a "wholesale discount" is not a proper subject for consideration in this hearing, but should be determined in a hearing held pursuant to Section 4 II (h) of the Act.

The definition of "retailing" should be deleted for the reasons hereinbefore set forth in the findings of fact for District No. 17.

For the purpose of clarification, we modify the definition of a "commitment" contained in paragraph 10 of Section I to read as follows:

"A 'commitment' is the status of a contract between the time a quotation is accepted or an option is exercised and the time the contract is formally reduced to writing."

We are of the opinion that definitions 17 to 22 contained in Section I of the composite findings hereinafter given are reasonable and desirable. The District Board did not define these terms although they appear in various rules proposed by the Board.

Rule 3 of Section II requires all contracts for the appointment of sales agents by Code Members or authorized representatives of Code Members to be in writing, and that copies of such agency contracts shall be filed with the Statistical Bureau. It is obvious that the purpose of this rule is to furnish necessary information to the Commission to enable it to determine whether or not the Code is being violated by sales agents or by Code Members through the use of sales agents. In order fully to effectuate the purpose of this rule, we are of the opinion that the rules should be modified so as clearly to indicate that the contract shall set forth all the terms and conditions of the appointment, including the amount or basis of the sales agents' commission. and, furthermore, that all agreements modifying sales agency contracts should likewise be in writing and filed with the Statistical Bureau. The District Board leaves the time for such filing to be ing" as proposed by the Board, is deter-

the establishment of the rules and regulations is a reasonable period within which to require the filing of sales agency contracts entered into on or prior to the effective date of the rules and regula-

Rule 5 of Section II provides that the Commission shall publish a list showing the names and addresses of sales agents and the Code Members for whom such agents act. In order that the Commission may properly carry out this rule and so that the lists published shall be accurate, we are of the opinion that the Code Member principal shall report to the Statistical Bureau the expiration, termination or rescission of all sales agency contracts.

Rules 4 and 7 of Section II should be clarified for the same reasons hereinbefore set forth for District No. 17.

Section V, rule 6 prohibits the payment of a commission to a sales agent or discount to a wholesaler where the coal is delivered or resold to any person who controls in whole or in part the sales agent or wholesaler. The rule, as it relates to sales agent should be properly contained in Section II, which is entitled 'Sales Agents." In so far as the rule prevents the payment of a discount to a wholesaler where the coal is delivered or resold to any person who controls in whole or in part the wholesaler, we are of the opinion that this rule cannot be properly enforced and accordingly should be deleted. In a proceeding against a Code Member for violation of this rule, a Code Member must be charged with knowledge of the fact that the wholesaler intended to resell the coal to a person who controls the wholesaler. It would be extremely difficult to prove such knowledge on the part of a Code Member and we are of the opinion that such a rule could be properly effectuated only by prohibiting the wholesaler from receiving a discount on coal resold to any person who controls him in whole or in part. Such a rule is the subject of consideration under a hearing pursuant to Section 4 II (h) of the Act, and is not the proper subject for consideration at this hearing.

For the reasons hereinbefore set forth in the findings of fact for District No. 17, the rules relating to the registration of wholesalers and farmers' cooperative organizations should be deleted with the exceptions of rules 1 of Sections III and IV, which should be combined and modifled to read as follows:

"No Code Member or sales agent of a Code Member shall pay or allow any discount from minimum prices to any person unless such person has been reg-. istered by the Coal Commission as authorized to receive such discount at the time of the sale."

As previously stated, Rule 4 of Section V, in light of the definition of "retailmission were proper in this hearing and fixed by the Commission. We believe minative of the persons entitled to a

Act; therefore, this rule is not a proper | lation of the Code. subject of consideration at this hearing and should be deleted.

For the reasons hereinbefore set forth in the findings of fact for District No. 17, rule 5 of Section V should be deleted.

We are of the opinion that the entire Section VI should be modified and clarifled in the same manner and for the same reasons hereinbefore set forth in the findings of fact for District No. 17.

Rule 1 of Section VII contained in Exhibit No. 195 should be clarified as hereinafter set forth in the composite findings. Rule 2 (a) of Section VII should be deleted for the same reasons as hereinbefore given fo rthe deletion of Rule II F 2 of Section VI for District No. 17. Rules 2 (b) and 2 (c) of Section VII, for the purposes of clarification, have been reworded in the manner set forth in the composite findings as later outlined.

The District Board does not propose any rules specifically requiring the filing of spot orders or any written confirmation thereof. However, the Board in Rule 4 of Section VII provided that any modification of a spot order must be made in writing and filed in the same manner as an order. We are of the opinion that a rule specifically requiring the filing of spot orders or the written confirmation thereof, and requiring that any modification of spot orders must be made in writing and filed with the Statistical Bureau in the same manner as an order, is desirable and reasonable.

For the same reasons hereinbefore set forth in the findings of fact for District No. 17. Rule 6 should be added to Section VIII in the manner set forth in the composite findings subsequently given.

Rule 4 of Section IX does not indicate as of what time interest at the current market rate should be charged where payment is made by note, trade acceptance or other form of indebtedness. For the purpose of clarification we believe this rule should be modified so as to provide that interest shall be charged from the due date of the account.

We are of the opinion that this rule should likewise be modified so as to provide that where payment is made under any circumstances after the due date of the account, interest must be charged. An unreasonable discrimination appears in this rule as it was proposed by the Board in that no provision is made for the charging of interest in a case where payment is not made at the due date of the account whether by default of the buyer or pursuant to an agreement for an extension of the term of credit and where such extension of the term of credit is not evidenced by a note, trade acceptance or other form of indebtedness.

For the reasons hereinbefore stated in the findings of fact for District No. 17, we are of the opinion that there should be included in Section IX a rule making the agreement, express or implied, to ex-

discount under Section 4 II (h) of the | than that authorized by the rules, a vio-

For the reasons hereinbefore set forth in the findings of fact for District No. 17, we are of the opinion that Rules 3, 5 and 7, of Section XI should be modified and clarified in the manner set forth in the composite findings subsequently given.

We are of the opinion that rule 6 of Section XI should be modified to provide that all coal must be sold and invoiced on a price per ton basis. This modification, in our opinion, is necessary for a uniform procedure and method to govern the selling and invoicing of coal. We believe this rule is necessary or otherwise the Commission must either establish supplementary prices based simply on thermal efficiency or else the Commission must undertake to translate sales made on such a basis into a price per ton basis in order to determine whether the minimum price has been violated or evaded.

We are of the opinion that the second paragraph of rule 8 (e) of Section XI should be deleted for the reason that it is impractical to enforce. Likewise, rule 8 (f) of Section XI should be deleted for the reason that it creates an unreasonable discrimination.

The witness testified that he was in accord with the testimony given by Mr. Thompson, making specific exceptions to modifications with which he was not in agreement. The witness did not except to the rule providing that every wholesaler, distributor or sales agent shall clearly set forth on any form of solicitation, order and statement covering coal offered for sale or sold, as follows:

(1) Either the name of the producer, or

(2) The trade name established and generally used by the producer in designation of coal produced from the mine from which shipment is made or should be made.

Such a rule cannot be directed against distributors at this hearing, but we are of the opinion that this rule is desirable and reasonable with reference to sales agents.

The witness for District Board No. 23 testified generally that the rules proposed by the District Board were reasonable, not inconsistent with the requirements of Section 4 of the Act, and in conformance with the standards of fair competition contained in the Act, although the witness on examination likewise testified that certain clarifications and modifications of such rules would, in his opinion, be desirable. Except as to those rules which we have already stated should be modified, we are of the opinion that the rules proposed by the District Board are in accordance with the above requirements.

Accordingly, we find that the following rules and regulations incidental to the sale and distribution of coal by Code Members in District No. 23 are reasontend credit for a period of time longer able, not inconsistent with the require- mean any District Board established un-

ments of Section 4 of the Act, and in conformance with the standards of fair competition established in the Act:

MARKETING RULES AND REGULATIONS INCI-DENTAL TO THE SALE AND DISTRIBUTION OF COAL BY CODE MEMBERS WITHIN DISTRICT NO. 23 AS PROPOSED BY DISTRICT BOARD NO. 23 AND AS APPROVED, DISAPPROVED, OR MODIFIED FOR THE PURPOSE OF COORDI-NATION

Section I.—Definitions

- 1. The term Person as used herein, includes individuals, firms, associations, partnerships, corporations, trusts, trustees, co-operatives, receivers and trustees in bankruptcy and in other legal proceedings, and any other recognized forms of business organizations.
- 2. A sales agent is a person who, as agent of a code member (and therefore without purchasing the coal), sells coal produced by such code member for him or on his behalf: provided, that "sales agent" shall not include an individual (herein referred to as a "salesman") regularly and continuously employed by a code member, and who regularly devotes the major portion of his time to the solicitation of purchases of coal produced by his code member employer.
- 3. A commission is the total of all compensations and allowances received by a sales agent from a code member for services rendered in the sale of coal.
- 4. A registered distributor is a person who has been duly registered by the Coal Commission pursuant to the rules and regulations prescribed by the Commission for the administration of Section 4 II (h) of the Act.
- 5. A spot order is a legal obligation for the sale and purchase of coal, the delivery of which is stipulated to be made within not more than thirty (30) days from the date upon which the order was accepted.
- 6. A contract is a legal obligation for the sale and purchase of coal, the deliveries of which are stipulated to be made during a period longer than that specified for a spot order.
- 7. A commitment is the status of a contract between the time a quotation is accepted or an option is exercised and the time the contract is formally reduced to writing.
- 8. A quotation is an offer for the sale of coal at a price which the offerer may withdraw prior to its being acted upon by the offeree.
- 9. An option is an offer for the sale of coal at a price to be accepted within a time certain, during which time the offerer may not withdraw the offer without consent of the offeree.
- 10. Coal Commission as used herein, shall mean the National Bituminous Coal Commission established under the provisions of the Bituminous Coal Act of 1937.
- 11. Act as used herein, shall mean the Bituminous Coal Act of 1937.
- 12. District Board as used herein, shall

der the provisions of Section 4, Part I (a) | mission. Certified copies of all such | before the Coal Commission by way of of the Act.

- 13. Statistical Bureau shall mean, unless otherwise specifically stated, the statistical bureau of the Commission for the district in which the coal involved in any transaction is produced, or the district in which is located a mine of a code member affected by any order or regulation.
- 14. Minimum price shall mean a minimum price established and made effective by the Coal Commission.
- 15. Maximum price shall mean a maximum price established and made effective by the Coal Commission.
- 16. "Registration and Register" as used herein, shall refer to registration with the Coal Commission pursuant to rules and regulations prescribed by the Commission for the administration of Section 4 of the Act.
- 17. The term producer includes all individuals, firms, associations, corporations, trustees, and receivers engaged in the business of mining coal.
- 18. The terms reconsignment and diversion as used herein shall mean the change in the original consignee or in the destination or route.
- 19. A code member means a producer who has accepted and holds membership in the Bituminous Coal Code promulgated under the Bituminous Coal Act of 1937.
- 20. Coal as used herein shall mean bituminous coal.
- 21. The term bituminous coal includes all bituminous, semi-bituminous and subbituminous coal and shall exclude lignite, which is defined as a lignitic coal having calorific value in British thermal units of less than seven thousand six hundred per pound and having a natural moisture content in place in the mine of 30 per centum or more.
- 22. The term control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Section II.—Sales Agents

- 1. All appointments of sales agents by code members or their agents or authorized representatives, and the terms and conditions of such appointments shall be subject to the Marketing Rules and Regulations from time to time established by the Coal Commission.
- 2. Each code member shall be responsible for the compliance by all his sales agents and agents and employees of sales agents with the provisions of the Bituminous Coal Code and of all rules and regulations, promulgations and determinations of the Coal, Commission.
- 3. (A) Every contract for the appointment of a sales agent by Code Member or by agents or authorized representatives of Code Members, or any modification thereof, shall be in writing, and shall

- agency contracts entered into on or prior to the effective date of the establishment of these rules and regulations and in effect on such date, shall be filed by the Code Member with the Statistical Bureau, or Bureaus, within twenty (26) business days after such date.
- (B) Certified copies of all contracts appointing sales agents or of agreements modifying any sales agency contract, entered into subsequent to the effective date of these rules and regulations, shall be similarly filed by the Code Member within ten (10) business days after the date upon which such contracts or agreements have been entered into.
- (C) Upon the expiration, termination, or rescission of any sales agency contract, the Code Member principal shall make a report thereof to the Statistical Bureau, or Bureaus, within ten (10) business days after the date of such expiration, termination, or rescission.
- 4. (A) As to all coal sold by a Code Member otherwise than through a sales agent or through an employee regularly employed as a salesman by the Code Member, such Code Member shall, not later than the fifteenth day of each month, file with the Statistical Bureau, or Bureaus, a list of all persons through whom, directly or indirectly, any such coal was sold during the preceding calendar month, with a statement of the duration and character of their employment, the tonnage sold by, and the rate and amount of compensation paid to, each of them.
- (B) Not later than the fifteenth day of each month, each Code Member shall also file with the Statistical Bureau, or Bureaus, similar information obtained from his sales agents concerning sales of coal made during the preceding calendar month, by the sales agents' representatives and employees other than salesmen regularly employed.
- (C) Not later than the fifteenth day of each month, each Code Member shall also file with the Statistical Bureau, or Bureaus, a statement showing the names and addresses of distributors to whom the Code Member or his sales agents sold coal during the preceding calendar month, the tonnage sold, and the amount of discount allowed to each such distributor.
- 5. A list showing the names and addresses of sales agents and the Code Members for whom such agents act shall be published by the Coal Commission from time to time.
- 6. All agency contracts and other information filed by Code Members in conformity with the foregoing regulations. other than the names and addresses of sales agents, shall be held by the Coal Commission as the confidential records of said parties and shall not be made public without the consent of the Code fully set forth therein all the terms and Member from whom the same shall have conditions of such contract, including the been obtained, except where such disamount or basis of the sales agent's com- closure is required in any proceeding exceeding forty-five (45) days, Subject

enforcement of the Act or upon the order of any court of competent jurisdiction.

- 7. From and after twenty (20) business days following the effective date of these Marketing Rules and Regulations no Code Member or sales agent of Code Member shall allow or pay, directly or indirectly, any commission or compensation to any sales agent.
- (a) Unless the contract of agency shall have been filed with the Coal Commission, as hereinbefore required, and
- (b) Unless the sales agent shall have agreed, in writing, with the Code Member to conform to and observe the minimum and maximum prices and Marketing Rules and Regulations established by the Coal Commission and the Fair Trade Practice Provisions of the Act. as well as all proper Orders of the Commission, and
- (c) Unless the sales agent shall have in good faith complied with the agreement as in paragraph (b) above provided.
- 8. No commission shall be paid to a sales agent by a Code Member where the coal is delivered or sold to any person who, financially or otherwise, controls such agent in whole or in part.

Section III.—Discounts

1. No Code Member or sales agent of a Code Member shall pay or allow any discount from minimum prices to any person unless such person has been registered by the Coal Commission as authorized to receive such discount at the time of the sale.

Section IV.—Quotations, Options and **Contracts**

- 1. Subject to further order of the Coal Commission no Code Member or sales agent of a Code Member shall enter into any agreement or order for the sale of coal providing for delivery for a period in excess of that authorized for a spot order, and no prices shall be less than the applicable minimum prices in effect at the time of the making of the agreement: Provided, however, that contracts for periods not exceeding one (1) year may be made with agencies of the Federal Government or with such agencies of State or local governments, as are required by law to purchase coal for periods in excess of thirty (30) days, at the following applicable minimum prices:
- (a) For deliveries during the first thirty (30) days of the contract at not less than the applicable minimum prices in effect at the time of the making of the agreement:
- (b) For deliveries thereafter at not less than the applicable minimum prices in effect at the time of delivery if such price is higher than the contract price. In the case of Governmental Agencies. options may be given for a period not

to further order of the Coal Commission, no option for the sale of coal may be given, except as herein specifically provided.

- 2. Upon the revocation or suspension of Rule 1 of this Section, Code Members or sales agents of Code Members may thereafter enter into contracts for the sale and delivery of coal at prices not less than the minimum price in effect at the time of the making of the contract, upon the following conditions:
- A. No contract for the sale of coal shall provide for delivery over a period in excess of twelve (12) months, except by special permission from the Coal Commission upon a showing of the necessity of meeting long term contract competition of oil, gas, or other fuels or forms of power, or for such other reasons as the Commission may deem appropriate in order to further the effectual administration of the Act.
- B. No contract for the sale of coal shall provide for deliveries to commence at a time later than ninety (90) days from the date upon which such contract was entered into.
- C. All contracts shall be in writing and shall express the entire agreement between the parties. The contract shall clearly state the date of execution, the effective date, the expiration date, the price agreed upon, the terms of payment, the size and grade of coal sold, the number of cars or tonnage to be shipped, the name of the originating mine, and, where the coal is purchased for consumption, the use to which the coal is to be applied. Contracts may also be made either (a) calling for a buyer's entire requirements or a stated percentage of his requirements, showing the maximum tonnage to be shipped thereunder, or (b) covering a buyer's requirements and specifying the tonnage to be shipped with an allowable overshipment or undershipment of not exceeding twenty (20) percent of the tonnage specified.

The provisions of the rule stated in the foregoing paragraph relating to quantity shall not apply to contracts made with agencies of the Federal, State or local Governments.

- D. Every contract shall express the entire agreement between the parties and no modification thereof shall be made except by written agreement which shall conform to all the requirements set forth in those rules and regulations.
- E. Each contract shall contain the following provisions, the meaning and effect of which shall not be changed or altered by any other provision of the contract:
- "1. This contract and the performance of all provisions thereof are expressly subject to the Bituminous Coal Act of 1937 and the lawful orders and regulations issued thereunder by the National Bituminous Coal Commission.

- "2. No shipment consigned to any destination point may be diverted or reconsigned without the consent of the seller confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the minimum price prescribed for such coal for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.
- "3. The coal shipped pursuant to this contract is sold and purchased upon the following conditions:
- "(a) If the coal is sold for consumption it shall be used in the plant or plants named herein and for the use stated herein:
- "(b) In case of diversion by the buyer to a use other than that stated herein. the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied."
- F. In any case where a contract is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in Item E (2) of rule 2 of this section without first securing the consent of the Code Member producing such coal to be confirmed in writing.
- G. Upon the revocation or suspension of Rule 1 of this Section, quotations and options for the sale of coal may be given for a period not exceeding fourteen (14) days. If the minimum price is increased beyond the quoted price within such fourteen (14) days, any quotation or option not accepted or exercised prior to the effective date of the price change shall, without notice, be considered withdrawn and no longer effective. Every quotation or option shall contain a provision to the foregoing effect and shall further stipulate that any contract or spot order entered into thereunder shall be subject to those Marketing Rules and Regulations.
- H. The provisions of this Rule 2 (G) shall not apply to sealed bids on business of the United States Government or States or Political subdivisions thereof, in which cases quotations and options at not less than the minimum price in effect at the time the bid is filed may be given for a period not exceeding fortyfive (45) days from the final filing date of bids.
- 3. A report of every commitment shall be filed by the Code Member or his sales agent with the Statistical Bureau or Bureaus within fifteen (15) business days from the date of the making of the agreement. Such reports shall set forth all the terms and conditions of the commitment. A true copy of every contract and of any agreement for modification thereof shall be filed with the Statistical Bureau with-

date of execution of such contract or agreement for modification: Provided, however, that a report of the commitment need not be filed if a copy of the contract is filed within fifteen business days.

Section V.-Spot Orders

- 1. A spot order shall be in writing or confirmed in writing within five (5) business days from the date of the making
- 2. Each spot order shall be subject to the following conditions which shall either be endorsed upon the form of the order or upon the written confirmation thereof by the Code Member or his sales agent, the meaning and effect of which shall not be changed or altered by any other provision of the order:
- "(a) No shipment consigned to any destination may be diverted or reconsigned without the consent of the seller confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the minimum price prescribed for such coal for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.
- "(b) The coal shipped pursuant to this order is sold and purchased upon the following conditions:
- "(1) If the coal is sold for consumption it shall be used in the plant or plants named herein and for the use stated herein:
- "(2) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied.
- "(c) If shipments called for by this order are not completed within thirty (30) days from the date of this order, the unfilled portion of the order shall be cancelled and no delivery of such tonnage shall be made."
- 3. In any case where a sale is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in Item 2 (a) of this section without first securing the consent of his Code Member principal to be confirmed in writing.
- 4. All the terms and conditions of a sale of coal must be fully and expressly set forth either in the order or in the written confirmation thereof, and such order or written confirmation thereof shall specifically contain all the terms required by Rule 2 (c) of Section IV of these marketing rules and regulations. Within ten (10) business days after the date of the making of the spot order or date of the written confirmation thereof, the Code Member or his sales agent shall in fifteen (15) business days from the file with the Statistical Bureau or Bu-

reaus a copy of such spot order or mit the sale of coal at an aggregate the unfair methods of competition of the confirmation. Any modification of a spot order must also be made in writing and filed with the Statistical Bureau or Bureaus in the same manner.

Section VI.—Use of Coal Analyses

- 1. No analysis of coal shall be utilized by a Code Member or his sales agent, in selling or offering for sale any coal produced by the Code Member, unless such Code Member shall have previously filed with the Statistical Bureau of the Coal Commission and the District Board for the District in which the coal is produced, copies of such analysis, together with a certificate setting forth the time and manner of obtaining the sample analyzed, the name and address of the person or firm making the analysis and stating that such analysis is truly representative of the grade and size of coal as regularly produced by the Code Member. Each such analysis shall be not less than a proximate analysis showing ash, volatile matter, fixed carbon, sulphur and British Thermal Units. Each analysis shall further show whether made on an "as received" or moisture "free" basis and if on an "as received" basis, the analysis shall include moisture content.
- 2. All analyses so filed shall be subject to inspection at the office of the Statistical Bureau at any time during office hours by an interested person, and may be used by the District Board and the Coal Commission in determining from time to time proper classifications of the coals produced by the code member.
- 3. Any analysis of the coal of a Code Member made by or on behalf of a consumer and accepted by the Code Member as the basis for an adjustment of price under any contract or order. shall be filed by the Code Member with the proper Statistical Bureau and District Board, within ten (10) days after such adjustment is made and shall be subject to the provisions of Rule 2 herein.
- 4. No agreement or order for the sale of coal produced by a Code Member, made upon a premium and penalty basis, shall be entered into or accepted by a Code Member unless the analysis upon which the premium and penalty clause is based has been previously filed as required in Rule No. 1. Such analysis shall be accompanied by a statement setting forth in full the terms of the premium and penalty provisions of the proposed contract or order.
- 5. In the case of premium and penalty agreements entered into prior to the effective date of those regulations, and claimed to be continuing in effect, the Code Member shall file a statement containing the information required under Rule No. 4, within fifteen (15) days from such effective date.
- 6. From and after the effective date of these rules and regulations, no Code Member shall enter into or perform any agreement made upon a penalty or a pre-

contract price below the applicable minimum price established by the Coal Commission for the coal sold and delivered upon such agreement subsequent to said effective date: Provided, that where a Code Member has entered into an agreement made upon a penalty or a premium and penalty basis, this rule shall not be considered as affecting any claim that the buyer might otherwise have had for substandard preparation or quality under Section IX of these marketing rules and regulations.

Section VII.—Terms of Payment

The price and fair trade practice provisions of the Act shall not be evaded or violated by a Code Member, or his sales agent through the use of terms of payment, and in no instance shall terms of payment be more favorable than the following:

- 1. On railroad fuel and on coal sold to industrial consumers for their own use, the date of payment shall be on or before the twenty-fifth (25th) of the month following the date of shipment.
- 2. Other coals shall not be sold on more favorable terms of payment than net cash thirty (30) days from date of shipment.
- 3. Invoices shall be paid in full in United States currency, or funds equivalent thereto, not later than due date.

No portion of the sale price may be withheld by agreement between the buyer and the seller based upon any unadjusted claim of the buyer.

No sales, delivery, or offer for sale of coal shall be made upon any condition, expressed or implied, that any portion of the sale price may be withheld by the Buyer, or deposited in escrow, or made subject to rebate or refund by the seller, pending or based upon a determination of the constitutionality of any provisions of the Act, of the jurisdiction of the Coal Commission, or of the validity or applicability of any order of the Coal Commission.

- 4. Where payment is made by note, trade acceptance, or other form of indebtedness, or where payment is made under any circumstances after the due date of the account, the seller shall charge and the buyer shall pay interest from and after the due date of the account at the current rate in the locality to which the coal is shipped to the vendee.
- 5. Freight on rail shipments shall not be paid by a Code Member or his sales agent except to repay stations as published in current railway tariffs or to the United States Government, States or political subdivisions thereof. Where freight is thus prepaid, the amount thereof shall immediately upon receipt of freight bill or notice of sight draft payment, be invoiced to the buyer for immediate payment.
- 6. The agreement by a Code Member, expressed or implied, to extend the credit by these rules and regulations, with the

Act, shall constitute a violation of the Code.

Section VIII.—Crushing and Pulverizing Coal

- 1. Each code member who maintains and operates at his mine or at any facility used in preparing coals for market, any crushing or pulverizing device, shall register such device with the Statistical Bureau of the Coal Commission, on forms submitted by the Coal Commission.
- 2. Such forms shall include the following:
- 1. Name and address of code member. 2. Name of mine or facility at which
- 3. Name and style or type of crushing or pulverizing device.
 - 4. Hourly capacity of device.

device is located.

- 5. Sizes of coal which device can crush or pulverize.
- 6. Sizes of coal resulting from crushing or pulverizing.
- 7. Number of tons crushed in 1937 and in each month of 1938.
- 8. Cost per ton of crushing or pulverizing in 1937.
- 3. Each code member shall on or before the tenth (10th) day of each succeeding month, file with the Statistical Bureau on forms to be provided by the Coal Commission, a statement verified by affidavit, setting forth the following information for the preceding calendar month:
- (a) Number of tons of each size crushed or pulverized.
- (b) Number of tons of each size resulting from crushing or pulverizing.

Section IX.—Miscellaneous

- 1. No deduction or allowance from invoice prices shall be granted by any code member or his sales agent to any purchaser for advertising.
- 2. The price and fair trade practice provisions of the Act shall not be evaded by any payment or allowance by a Code Member, his agent, or representative, to any purchaser or purchaser's representative covering advertising, and the amount of expenditures for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.
- 3. Where coal is refused by a consignee in transit or at destination, the Code Member may sell the same at the best obtainable price: Provided. That in each case the code member shall file with the Statistical Bureau, within five (5) days from the date of such resale a statement giving the name and address of the consignee and the reasons. for the refusal, the price at which the coal was originally sold, the name and address of the purchaser upon resale and the price received by the seller upon for a period longer than that authorized resale, a copy of the carrier's notice of refusal or notice of reconsignment and mium and penalty basis which will per- | effect of violating the price provisions of | such other pertinent facts as may be of-

fered in proof of the necessity of such resale, and that in making such resale the provisions of the Code and the Marketing Rules and Regulations of the Coal Commission other than as to price have not been violated or evaded.

- 4. All code members shall promptly furnish to the Statistical Bureau of the Coal Commission for the District in which the coal originated, full reports of all reconsignments and shall authorize the carrier making such reconsignments to furnish complete information thereon to such Statistical Bureau.
- 5. No allowance shall be made for any shipment of coal of sub-standard preparation or quality unless formal claim duly executed by or on behalf of the buyer and verified by affidavit setting forth the amount claimed by way of allowance and reasons for the claim is filed with the Code Member or his sales agent within ten (10) days after the receipt of the coal.

The Code Member or sales agent with whom such claim for allowance is filed shall immediately notify the Statistical Bureau and the District Board, furnishing an authentic copy of the buyer's claim together with a statement of the producer's views as to the validity of the claim, setting forth:

- (a) the name and address of the consignee and the reason for the allowance
- (b) the amount of allowance or adjustment made
- (c) the price at which the coal was sold
 - (d) the tonnage delivered
- (e) the name of the mine and the Code Member
 - (f) date of shipment
- (g) grade and size of coal and destina-
- (h) a statement that the adjustment has not been made with the purpose or intent of evading the price or fair trade practice provisions of the Act.
- The screening of mine run or rescreening of other grades of coal sold and billed as such for the buyer's account for the purpose of keeping the resultant products separate in the shipment thereof is prohibited. All coal must be sold and invoiced at a price per ton basis and under the designation shown therefor in the price schedule published by the Coal Commission.
- 7. All coal confiscated or lost in transit shall be invoiced to the carrier at not less than the minimum price established for such coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or loss, which ever may be the higher.
- 8. No substitution may be made upon any spot order or contract, of any grade or size of coal taking a minimum price higher than the price specified in such order or contract, except upon the following conditions:

- not be an express or implied condition Commission. of the order or contract.
- (b) The coal substituted must be coal which the code member has already produced and loaded into transportation facilities and which can not be sold promptly by the exercise of the usual sales effort, such substitution to be limited to a specific tonnage for shipment on a specific order and from a specific mine.
- (c) The substitution must be reasonably necessary as an emergency measure in order to continue operation of the mine of the code member.
- (d) The substitution shall be acceptable to the purchaser of the coal, and shall not be made with the purpose or effect of conferring any advantage on the purchaser or securing any preference or advantage for the code member over his competitors.
- (e) Such substitution may be made only with the approval of a duly designated representative of the Commission and in each instance formal application therefor shall be made upon forms provided by the Commission and permits shall be issued prescribing the conditions of substitution in each case approved.
- (f) Copies of substitution permits shall be mailed daily to the office of the District Board and weekly summaries of substitution permits shall be mailed to all District Boards within the Price Area. The Commission may from time to time publish the esesntial facts as to all substitution permits granted.
- (g) In each case of coal shipped under a substitution permit each invoice shall specifically show the permit number and the size and grade of coal substituted.
- 9. Every sales agent shall cause to be clearly set forth upon any form of solicitation, order, invoice and statement covering coal offered for sale or sold, the following:
- (1) Either the name of the producer
- (2) The trade name established and generally used by the producer in designation of coal produced from the mine from which shipment was made or is to
- 10. If, in converting a net or gross ton price, freight rate or freight rate differential, the calculation extends to more than 3 decimals, and the 4th decimal is .0005 or more, it shall be added as .001, and if under .0005 it shall be eliminated.
- 11. Failure to file information required by the within Marketing Rules and Regulations or the filing of false information, wilfully made, will subject the party failing to file the information required, or the party so filing, to the penalties of the Act and other penalties imposed by law.
- 12. These Marketing Rules and Regulations are subject to revision and written or oral form, of trade-marks,

(a) The proposed substitution shall amendment by further order of the Coal

Section X.—Unfair Methods of Competition

As provided in Section 4, Part II (i) of the Act:

The following practices with respect to coal shall be unfair methods of competition and shall constitute violations of

- 1. The consignment of unordered coal, or the forwarding of coal which has not actually been sold, consigned to the producer or his agent: Provided, however, That coal which has not actually been sold may be forwarded, consigned to the producer or his agent at rail or track yards, tidewater ports, river ports, or lake ports, or docks beyond such ports when for application to any of the following classes: Bunker coal, coal applicable against existing contracts, coal for storage (other than in railroad cars) by the producer or his agent in rail or track yards or on docks, wharves, or other yards for resale by the producer or his agent.
- 2. The adjustment of claims with purchasers of coal in such manner as to grant secret allowances, secret rebates, or secret concessions, or other price discrimination.
- 3. The prepayment of freight charges with intent to or having the effect of granting a discriminatory credit allowance.
- 4. The granting in any form of adjustments, allowances, discounts, credits, or refunds to purchasers or sellers of coal, for the purposes or with the effect of altering retroactively a price previously agreed upon, in such manner as to create price discrimination.
- 5. The predating or postdating of any invoice or contract for the purchase or sale of coal, except to conform to a bonafide agreement for the purchase or sale entered into on the predate.
- 6. The payment or allowance in any form or by any device of rebates, refunds, credits, or unearned discounts, or the extension to certain purchasers of services or privileges not extended to all purchasers under like terms and conditions, or under similar circumstances.
- 7. The attempt to purchase business, or to obtain information concerning a competitor's business by concession, gifts, or bribes.
- 8. The intentional misrepresentation of any analysis or of analyses, or of sizes, or the intentional making, causing, or permitting to be made, or publishing, of any false, untrue, misleading, or deceptive statement by way of advertising, invoicing, or otherwise concerning the size, quality, character, nature, preparation, or origin of any coal bought, sold, or consigned.
- 9. The unauthorized use, whether in

trade names, slogans, or advertising matter already adopted by a competitor, or any deceptive approximation thereof.

- 10. Inducing or attempting to induce, by any means or device whatsoever, a breach of contract between a competitor and his customer during the term of such contract.
- 11. Splitting or dividing commissions, brokers' fees, or brokerage discounts, or otherwise in any manner directly or indirectly using brokerage commissions or jobbers' arrangements or sales agencies for making discounts, allowances, or rebates, or prices other than these determined under this Act, to any industrial consumer or to any retailers, or to others, whether of a like or different class.
- 12. Selling to, or through, any broker, jobber, commission account, or sales agency, which is in fact or in effect an agency or an instrumentality of a retailer or an industrial consumer or of any organization of retailers or industrial consumers, whereby they or any of them secure either directly or indirectly a discount, dividend, allowance, or rebates, or a price other than that determined in the manner prescribed by this Act.
- 13. Employing any person or appointing any sales agent, at a compensation obviously disproportionate to the ordinary value of the service or services rendered, and whose employment or appointment is made with the primary intention and purpose of securing preferment with a purchaser or purchasers of coal.

CONCLUSION

It is the conclusion of the Commission that the schedules of proposed minimum prices and marketing rules and regulations submitted to the Commission by the District Boards for Districts 16, 17, 18, 19, 20, 22 and 23, as amended, corrected, modified or revised, conform to the requirements of Section 4-II (a) of the Act and that same, as amended, corrected, modified, or revised, may properly be transmitted to the respective District Boards within Minimum Price Areas 6, 7, 9 and 10 to serve as a basis for the coordination as provided in Section 4-II (b) of the Act.

By the Commission.

[SEAL]

PERCY TETLOW, Chairman.

Dated this 9th day of Dec., 1938.

[F. R. Doc. 38–3728; Filed, December 12, 1938; 9:47 a. m.]

[Order No. 253]

AN ORDER DIRECTING THE DISTRICT BOARDS FOR DISTRICTS NOS. 16, 17, 18, 19, 20, 22 and 23, TO COORDINATE THE MINIMUM PRICES AND RULES AND REGULATIONS INCIDENT TO THE SALE AND DISTRIBUTION OF COAL APPROVED BY THE NATIONAL BITUMINOUS COAL COMMISSION TO SERVE AS THE BASIS FOR COORDINATION BY SAID

DISTRICT BOARDS; AND DIRECTING SAID DISTRICT BOARDS TO SUBMIT TO SAID COMMISSION SUCH COORDINATED PRICES AND RULES AND REGULATIONS TOGETHER WITH THE DATA UPON WHICH THEY ARE PREDICATED; AND ESTABLISHING AND PROMULGATING RULES AND REGULATIONS UNDER WHICH SUCH COORDINATION SHALL BE ACCOMPLISHED

Pursuant to Act of Congress entitled "An Act to regulate interstate commerce in bituminous coal, and for other purposes" (Public No. 48, 75th Cong., 1st Sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders and directs:

- 1. That the District Boards for Districts Nos. 16, 17, 18, 19, 20, 22 and 23, shall forthwith proceed to coordinate the minimum prices and rules and regulations incident to the sale and distribution of coal, approved by the Commission to serve as a basis for coordination within and among the said districts, under authority of and in accordance with Section 4, Part II, of the Bituminous Coal Act of 1937, and the rules and regulations established and promulgated by this order. When said coordination shall have been accomplished, said District Boards shall submit said coordinated minimum prices and marketing rules and regulations to the Commission together with the data upon which they are predicated, as hereinafter provided.
- 2. That said District Boards shall coordinate in common consuming market areas upon a fair competitive basis said minimum prices and marketing rules and regulations. Such coordination of the minimum prices, among other factors, but without limitation, shall take into account the various kinds, qualities, and sizes of coal, and transportation charges upon coal. All minimum prices proposed for any kind, quality, or size of coal for shipment into any common consuming market area shall be just and equitable, and not unduly prejudicial or preferential, as between and among districts, shall reflect, as nearly as possible, the relative market values, at points of delivery in each common consuming market area, of the various kinds, qualities, and sizes of coal produced in the various districts, taking into account values as to uses, seasonal demand, transportation methods and charges and their effect upon a reasonable opportunity to compete on a fair basis, and the competitive relationships between coal and other forms of fuel and energy; and shall preserve as nearly as may be existing fair competitive opportunities. The minimum prices proposed as a result of such coordination shall not, as to any district, reduce or increase the return per net ton on all the coal produced therein below or above the minimum return as provided in subsection (a) of Section 4, Part II, of the Act by an amount greater than neces-

sary to accomplish such coordination, to the end that the return per net ton upon the entire tonnage of the minimum price area shall approximate the weighted average of the total cost per net ton of the tonnage of such minimum price area.

- 3. That the rules and regulations incidental to the sale and distribution of coal by code members shall be so coordinated as to be reasonable and shall not be inconsistent with the requirements of the Act and shall conform to the standards of fair competition as set forth and established in Section 4, Part II, of the Bituminous Coal Act of 1937.
- 4. That the Commission hereby establishes and promulgates the following rules and regulations under which the minimum prices and rules and regulations incident to the sale and distribution of coal shall be coordinated:
- I. Each District Board shall by appropriate resolution, designate and appoint one or more persons with power of delegation and substitution to represent the District Board in the work of coordination and fully empower such person or persons to act for the District Board in a meeting with other such representatives from the other District Boards named in this order.
- II. Said representatives of the District Boards shall convene at the offices of the Commission in the City of Washington, D. C., at 10:00 o'clock A. M. on the 12th day of December, 1938, and begin the work of coordination as ordered and directed herein. Said meeting shall continue in session daily (Sundays and holidays excepted), and shall be completed on or before ten (10) days from the date of convening, which period shall not be extended for any District Board or Boards except upon good cause shown.

III. The presiding officer or the secretary of the meeting shall report daily to the Commission the progress of the work. In the event the representatives of the District Boards cannot agree upon all or any part of the work of coordination, they shall certify the fact to the Commission and to the District Boards represented, together with a detailed statement covering points upon which agreements have failed.

IV. When the representatives of said District Boards shall have finished the work of coordination assigned to them, and coordination has been fully or partially accomplished by agreement, a full report thereof shall be made to the Commission and to each of the Boards represented, together with the data upon which such prices and rules and regulations are predicated.

V. On receipt of the report made as provided in paragraph IV hereof, a meeting of the respective District Boards shall be called and held and said report of the coordination provided for in Section 4, Part II, of the Act shall be fully considered by said Boards, and said report shall, by appropriate resolution of the Board, be approved and adopted, modified and

¹ 50 Stat. 72.

adopted, or disapproved. The action of | and submitted to the Commission tothe District Boards respectively shall be reported to the Commission. When each of the District Boards named in this order agree and coordination is reached and accomplished, the same shall be submitted to the Commission as provided in Section 4. Part II (b), of the Act. If coordination is not agreed upon and accomplished, and in the opinion of any one or more of said District Boards, cannot be agreed upon and accomplished, said fact shall be shown by appropriate resolution of such Board or Boards and duly certified to the Commission.

VI. At said meeting the representatives of the several District Boards shall determine the consuming market areas into which each District ships, and shall define the same in the most practical way by map or by geographic or territorial description in writing.

Common consuming market areas shall then be ascertained, determined, and identified, on the basis of the determination made pursuant to the next succeeding section.

VII. The representatives shall then ascertain and compute the total tonnage of each District moving into each consuming market area in 1937 as taken from the Commission D-1 and D-2 reports and other competent data, broken down by use, size, and quality classifications, seasonal demand, and transportation methods. The representatives of the Boards shall determine the competing coals in each consuming market area by size, quality, use, and seasonal demand, and by transportation methods. The size groupings by quality classification, use, and seasonal demand, shall be coordinated in each consuming market.

VIII. Minimum prices reflecting destination differentials shall then be ascertained and determined on all coals competing in each consuming market area according to the standards set forth in Section 4, Part II, of the Act. The representatives of the District Boards shall thereupon determine minimum prices, free on board transportation facilities at the mines for shipment into each consuming market area for each kind, quality and size of coal competing in said area or areas in accordance with the provisions of Section 4, Part II, of the Act.

IX. When the representatives have completed their work of coordination of minimum prices in all consuming market areas and reported the same to the Commission and to the District Boards, each District Board shall immediately convene for consideration and determination, and shall determine the minimum prices for all coal free on board transportation facilities at the mine for shipment into consuming market areas, according to the provisions of Section 4, Part II, of the Act.

X. When all minimum prices have been determined as provided in Section 4, Part II, of the Act and these rules shall be prepared by the District Boards | F. R. Doc. 38–3724; Filed, December 12, 1938;

gether with the data upon which they are predicated including a statement showing the calculated returns for the coals of the Price Area, based upon the tonnages of the several Districts, determined as in paragraph VII herein provided. At the time of the submission of the schedule of minimum prices and the data upon which they are predicated, each District Board shall furnish a copy of the proposed price schedule to each code member within its District, and shall file with the Commission 250 copies of the proposed price schedule, and with each other District Board coordinating, 20 copies thereof. In addition thereto, each District Board shall file with the Commission 50 copies of the data upon which the proposed price schedule is predicated.

XI. The District Board representatives shall also, at the meetings in Washington provided for herein, coordinate the rules and regulations for the sale and distribution of coal for code members, called Marketing Rules and Regulations, as directed in paragraph 3 hereof.

XII. When coordination of the marketing rules and regulations is accomplished, either in whole or in part, as provided in paragraph III hereof, the same shall be reported to the Commission and to the District Boards, as provided in paragraph IV hereof, and considered and acted upon by the District Boards as provided in paragraph V

XIII. When all coordinated marketing rules and regulations have been determined, a schedule of such marketing rules and regulations shall be prepared by the District Boards and a copy shall be furnished to each code member, and 250 copies thereof shall be furnished to the Commission, and 20 copies to each other District Board coordinating. In addition thereto, each District Board shall file 50 copies of the data upon which such marketing rules and regulations are predicated with the Commis-

XIV. These rules and regulations are subject to modification or amendment. or may be supplemented by further order of the Commission.

5. The Secretary of the Commission is directed to cause a copy of this order, together with the rules and regulations contained therein, to be published forthwith in the FEDERAL REGISTER, and shall cause copies hereof to be mailed to each code member within the named districts, to the Consumers' Counsel, and to the Secretary of each District Board, and shall cause copies hereof to be made available for inspection by interested parties in each of the Statistical Bureaus of the Commission.

By order of the Commission.

Dated this 9th day of December, 1938. [SEAL] F. WITCHER McCullough,

Secretary.

TITLE 47—TELECOMMUNICATION FEDERAL COMMUNICATIONS COMMISSION

CHAPTER II. GÉNERAL SUBSTANTIVE RULES PART 24. CERTAIN LOW POWER RADIO FREQUENCY ELECTRICAL DEVICES

The Commission adopted the following new rules:

SEC. 24.01 Applicability of provisions. Pending the acquiring of more complete information regarding the character and effects of the radiation involved, the following provisions shall govern the operation of the low power radio frequency electrical devices hereinafter described.* [Rule 25.01, #]

SEC. 24.02 Apparatus included defined; standards. With respect to any apparatus which generates a radio frequency electromagnetic field functionally utilizing a small part of such field in the operation of associated apparatus not physically connected thereto and at a distance not greater than $\frac{157,000}{f. (kc)}$ ft. $\frac{(\lambda)}{(2\pi)}$ the existing Rules and Regulations of the Commission shall not be applicable, provided:

(a) That such apparatus shall be operated with the minimum power possible to accomplish the desired purpose.

(b) That the best engineering principles shall be utilized in the generation of radio frequency currents so as to guard against interference to established radio services, particularly on the fundamental and harmonic frequencies.

(c) That in any event the total electromagnetic field produced at any point a distance of $\frac{157,000}{f.$ (kc) ft. $\frac{(\lambda)}{(2\pi)}$ from the apparatus shall not exceed 15 microvolts per meter.

(d) That the apparatus shall conform to such engineering standards as may from time to time be promulgated by the Commission.* [Rule 25.02, #]

SEC. 24.03 Exception: radio interference. The provisions of Section 24.01 and 24.02 shall not be construed to apply to any apparatus which causes interference to radio reception.* [Rule 25.03, #]

SEC. 24.04 Inspection and test. Upon request, the Commission will inspect and test any apparatus described in Sections 24.01 and 24.02, and on the basis of such inspection and test, formulate and publish findings as to whether such apparatus does or does not comply with the above conditions, and issue a certificate specifying conditions of operation to the party making such request.* 25.04, #1

By the Commission.

T. J. SLOWIE, Secretary.

[F. R. Doc. 38-3743; Filed, December 13, 1938; 9:50 a.m.]

^{*}Promulgated under the authority contained in Sec. 4 (i), 48 Stat. 1066; 47 U. S. C. 154 (i)—Sec. 303 (f), 48 Stat. 1082; 47 U. S. C. 303 (f)—Sec. 303 (r), 50 Stat. 191; 47 U. S. C. 303 (r). #Adopted by the F. C. C. on Nov. 21, 1938.

DESTRUCTION OF RECORDS OF TELECOM-MUNICATION CARRIERS

PART 246. LIST OF ACCOUNTS, RECORDS, AND MEMORANDA, AND PERIODS OF RETENTION

The Commission amended Item 86 (d) of Section 246.01 to read:

(d) Copies of concurrences filed with the Interstate Commerce Commission or the Federal Communications Commission.—6 years after cancelation. (Sec. 4 (i) 48 Stat. 1066; 47 U.S.C. 154 (i)) [Promulgated by the F. C. C. on Nov. 9, 19381

Notice

Attention is directed to the following typographical and other errors in the publication of Chapter XVIII of this Commission's Regulations in the issue of the Federal Register dated September 8. 1938 (Vol. 3, No. 175):1

The index to Part 246, "List of Accounts, Records and Memoranda, and Periods of Retention," contains a reference to "Sec. 246.02 Special provision relating to telephone companies." entire reference should be deleted.

In Sec. 246.01, under the caption, "Description of Records and Period to be Retained":

Item I (a), Line 2: The apostrophe following the word "ledgers" should be deleted:

Item 41 (d), Line 3: The word "seals" should be "meals;"

Item 65 (c), Line 1: The word "Miners' " should be "Minors':"

Item 85 (b), Line 1: The word "last" should be "lost."

By the Commission.

[SEAL]

T. J. SLOWIE, Secretary.

[F. R. Doc. 38-3742; Filed, December 13, 1938; 9:50 a. m.]

TITLE 49—TRANSPORTATION AND RAILROADS

INTERSTATE COMMERCE COMMISSION

[Order No. 15780]

DEPRECIATION CHARGES OF CARRIERS BY WATER

At a session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 5th day of December, A. D. 1938.

Good cause appearing therefor:

It is ordered, That the order of August 1. 1935 in this proceeding, as amended April 2, 1936, March 17, 1937, November 22, 1937 and June 10, 1938, be, and it is hereby, further amended by changing to January 1, 1940 all effective dates

CHAPTER XVIII. Rules Governing the specified as January 1, 1939 in said order made available for inspection in the office as amended. This change in the effective dates shall not be construed as changing the latest date as of which estimates of percentage rates shall be filed with the Commission. That date, as provided in paragraph (7) of the order as amended, is August 1, 1939.

By the Commission, division 4.

[SEAL]

W. P. BARTEL. Secretary.

[F. R. Doc. 38-3749; Filed, December 13, 1938; 12:26 p. m.]

Notices

DEPARTMENT OF THE INTERIOR.

National Bituminous Coal Commis-

[General Docket No. 15]

IN THE MATTER OF THE ESTABLISHMENT OF MINIMUM PRICES AND MARKETING RULES AND REGULATIONS

NOTICE OF CHANGE OF PLACE AT WHICH VERIFIED COST REPORTS OF THE INDIVID-UAL PRODUCERS WITHIN MINIMUM PRICE AREA NO. 4 WILL BE MADE AVAILABLE FOR INSPECTION, FROM WASHINGTON, D. C., TO DENVER, COLORADO; AND ORDER FOR AND NOTICE OF RE-OPENING OF HEARING IN THE MATTER OF THE DETERMINATIONS OF THE WEIGHTED AVERAGE OF THE TOTAL COSTS OF THE TONNAGE PRODUCED IN MINIMUM PRICE AREA NO. 4

Whereas, the Commission, by its Order entered herein on the 6th day of December, 1938,1 directed that the verified cost reports of the individual producers within Minimum Price Area No. 4, as submitted to the Commission pursuant to Orders Nos. 15 and 29.2 be made available for inspection during business hours on and after December 15, 1938, at the offices of the Commission, Washington, D. C. by those interested parties who have filed appearances in this proceeding; and

Whereas, said Order further provided that the hearing in the matter of the weighted average of the total costs per net ton of the tonnage produced in Minimum Price Area No. 4 be re-opened, and interested parties be afforded further opportunity to introduce affirmative evidence and to cross-examine witnesses as to the correctness of said composite reports heretofore introduced in evidence at the aforesaid hearing of this proceeding, upon proper notice, at a time and place to be later designated by the Commission: and

Whereas, the Commission having determined that the said cost reports for Minimum Price Area No. 4 could be more conveniently, for all interested parties,

of the Statistical Bureau of the Commission, Central Savings Bank Building, Denver, Colorado, than in the City of Washington, as noticed:

Now, therefore, notice is hereby given that the verified cost reports of the individual producers within Minimum Price Area No. 4, submitted to the Commission pursuant to Orders Nos. 15 and 29, shall be made available for inspection during business hours, on and after December 15, 1938, at the office of the Statistical Bureau of the Commission, Central Savings Bank Building, Denver, Colorado, by those interested parties who have filed appearances in this proceeding, and the Secretary of the Commission is hereby directed to cause said verified cost reports to be made available as aforesaid instead of at the office of the Commission, Washington, D. C., as previously

Notice is further given that the hearing in the matter of the determination of the weighted average of the total costs per net ton of the tonnage produced in Minimum Price Area No. 4, as re-opened by Order of the Commission entered herein on the sixth day of December, 1938, will be held in the Hearing Room of the Commission, Albany Hotel, Denver, Colorado, on the 28th day of December, 1938, at ten o'clock, A. M., at which hearing all interested parties will be afforded a further opportunity to introduce affirmative evidence and cross-examine witnesses as to the correctness of said composite reports heretofore introduced in evidence in this proceeding.

At said hearing any interested party desiring to avail himself of the opportunity to introduce affirmative evidence, or to cross-examine any witness shall, not later than the 24th day of December. 1938, file with the Commission, at its office in the Central Savings Bank Building. Denver. Colorado. a written statement setting forth the nature of such affirmative evidence and/or the names of the witnesses to be cross-examined.

The Secretary of the Commission is hereby directed to cause a copy of this Order and Notice to be published forthwith in the FEDERAL REGISTER and in two consecutive issues of a newspaper of general circulation in District No. 14, and shall cause copies hereof to be mailed to each Code Member, to the Consumers' Counsel, to the Secretary of each District Board, and to all parties who have entered appearances in this proceeding, and shall cause copies hereof to be made available for inspection by interested parties at each of the Statistical Bureaus of the Commission.

By order of the Commission,

Dated this 9th day of December, 1938.

[SEAL] F. WITCHER McCullough,

Secretary.

[F. R. Doc. 38-3727; Filed, December 12, 1938; 9:46 a. m.]

¹ 3 F. R. 2194 DI.

² 3 F. R. 1445 DI.

¹³ F. R. 2886 DI.

³ 3 F. R. 1893, 1905 DI.

MISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 9th day of December, A. D. 1938.

[File No. 30-160]

IN THE MATTER OF PUBLIC SERVICE OF PENNSYLVANIA, INC.

ORDER RELATIVE TO STATUS AS HOLDING COMPANY

Public Service of Pennsylvania, Inc., a registered holding company, having made application pursuant to Section 5 (d) of the Public Utility Holding Company Act of 1935 for an order, declaring that it has ceased to be a holding company; a hearing on said application having been held; the record in the matter having been duly considered; and the Commission having thereon entered its findings and opinion on such application;

It is ordered, That Public Service of Pennsylvania, Inc., has ceased to be and at this time is not a holding company.

It is further ordered. That, if the gross revenues of Public Service of Pennsylvania, Inc., and its subsidiary companies derived from their operations as public utility companies exceed the sum of \$150,000 in any fiscal year, Public Service of Pennsylvania, Inc., shall notify the Commission of such fact within sixty days after the close of such fiscal year.

By the Commission.

FRANCIS P. BRASSOR, [SEAL] Secretary.

F. R. Doc. 38-3747; Filed, December 13, 1938; 11:09 a. m.]

United States of America-Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 9th day of December 1938.

| File No. 56-151

IN THE MATTER OF WALNUT ELECTRIC & GAS CORPORATION

ORDER ALLOWING APPLICATION TO BECOME EFFECTIVE

Walnut Electric & Gas Corporation, a registered holding company, having filed with the Commission an application and amendments thereto pursuant to Section 12 (d) of the Public Utility Holding Company Act of 1935 regarding the sale by the applicant of 547 shares of common stock, that being all the outstanding capital stock, of Peoples Gas Company, a subsidiary of applicant for a total consideration of \$5,000; a hearing on said application, as amended, having been held after appropriate notice: 3 the

ined; and the Commission having made and filed its findings herein;

It is ordered. That said application, as amended, be and become effective forthwith, on the condition, however, that the sale of said securities shall be effected in substantial compliance with the terms and conditions of, and for the purposes represented by, said application, as amended, and that within ten days after said sale the applicants shall file with this Commission a certificate of notification showing that such sale has been effected in accordance with the terms and conditions of, and for the purposes represented by, said application as amended.

By the Commission.

FRANCIS P. BRASSOR, [SEAL] Secretary.

[F. R. Doc. 38-3748; Filed, December 13, 1938; 11:09 a.m.]

United States of America-Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 10th day of December, A. D. 1938.

[File No. 32-119]

IN THE MATTER OF GREEN MOUNTAIN POWER CORPORATION

ORDER RELATIVE TO ISSUE AND SALE OF SECURITIES

Green Mountain Power Corporation, a subsidiary of New England Power Association, a registered holding company, having filed an application and amendments thereto pursuant to Section 6 (b) of the Public Utility Holding Company Act of 1935 for exemption from the provisions of Section 6 (a) of the Act of the issue and sale of \$7,750,000 principal amount of its First and Refunding Mortgage Bonds, 33/4 % Series, due December 1, 1963 and \$1,375,000 principal amount of its Serial Notes, 41/4 %, due 1940-1953;

A hearing on such application having been held after appropriate notice; 1 the record in this matter having been examined; and the Commission having made and filed its findings herein:

It is ordered, That the issue and sale of the aforesaid securities in accordance with the terms and conditions set forth in, and for the purposes represented by said application, be, and the same hereby are, exempt from the provisions of Section 6 (a) of the Public Utility Holding Company Act of 1935; upon further condition that if the express authorization of the issue and sale of such securities by the Public Service Commission of the State of Vermont shall be revoked or otherwise terminated this exemption shall immediately terminate without fur-

SECURITIES AND EXCHANGE COM-| record in the matter having been exam-| ther order of this Commission, and upon the further condition that within ten days after the issue and sale of the proposed bonds the applicant shall file with this Commission a certificate of notification showing that such issue and sale have been effected in accordance with the terms and conditions of and for the purposes represented by said amended application.

By the Commission.

[SEAL] FRANCIS P. BRASSOR. Secretary.

[F. R. Doc. 38-3746; Filed, December 13, 1938; 11:09 a. m.],

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 13th day of December, A. D. 1938.

IN THE MATTER OF STANDARD OIL COMPANY OF CALIFORNIA

[File No. 31-59]

ORDER CHANGING OFFICER TO PRESIDE AT HEARING

The Commission having heretofore, on November 29, 1938, designated Charles S. Moore, an officer of the Commission, to preside at a hearing to be held in the matter of the application of Standard Oil Company of California, in room 1103, Securities and Exchange Building, 1778 Pennsylvania Avenue, N. W., Washington, D. C., at 10:00 A. M., on December 13, 1938.

It is ordered, That such designation of Charles S. Moore is hereby rescinded,

It is further ordered. That Charles S. Lobingier, an officer of the Commission. be, and he hereby is, designated to preside at such hearing, and authorized to adjourn said hearing from time to time. to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by

Upon the completion of the taking of testimony in this matter, the officer conducting said hearing is directed to close the hearing and make his report to the Commission.

By the Commission.

[SEAL]

Francis P. Brassor. Secretary.

[F. R. Doc. 38-3745; Filed, December 13, 1938; 11:09 a, m.]

United States of America-Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its

¹ 3 F. R. 2555 DI.

²³ F. R. 2752 DI.

¹3 F. R. 2751 DL.

¹ 3 F. R. 2816 DI.

[File No. 43-163]

IN THE MATTER OF FEDERAL LIGHT & TRAC-TION COMPANY

ORDER CHANGING OFFICER TO PRESIDE AT HEARING

The Commission having heretofore, on November 28, 1938, designated William W. Swift, an officer of the Commission, to preside at a hearing to be held in the

on the 13th day of December, A. D. 1938. & Traction Company, in room 1101, Securities and Exchange Building, 1778 Pennsylvania Avenue, N. W., Washington, D. C., on December 14, 1938, at 10:00 A. M.,

It is ordered, That such designation of William W. Swift is hereby rescinded, and

It is further ordered, That Robert P. Reeder, an officer of the Commission be. and he hereby is, designated to preside at such hearing, and authorized to adjourn said hearing from time to time, to administer oaths and affirmations, subpoena witnesses, compel their attendance,

office in the City of Washington, D. C., | matter of the declaration of Federal Light | take evidence, and require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law.

Upon the completion of the taking of testimony in this matter, the officer conducting said hearing is directed to close the hearing and make his report to the Commission..

By the Commission.

[SEAL] FRANCIS P. BRASSOR, Secretary.

[F. R. Doc. 38-3744; Filed, December 13, 1938; 11:09 a. m.]

¹ 3 F. R. 2795 DI.